

**CALIFORNIA COASTAL COMMISSION**

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# Th5b

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Hearing Date : 5/13/99

**STAFF REPORT: APPEAL**  
**SUBSTANTIAL ISSUE DETERMINATION & DE NOVO COASTAL PERMIT**

LOCAL GOVERNMENT: County of Santa Cruz

DECISION: Approval with Conditions (See Exhibit 2)

APPEAL NO.: A-3-SCO-98-101

APPLICANT: **FRED BAILEY AND GREG STELTENPOHL**

PROJECT LOCATION: 3500 Highway 1 (opposite the highway's intersections with Davenport Avenue and Center Street), Davenport, Santa Cruz County. APN 58-121-04 (see Exhibit 1)

PROJECT DESCRIPTION: Remodel a 13,127 sq. ft. building and add 9,796 sq. ft. for a three-phased, mixed use project (commercial/residential/manufacturing); grade for and construct a new parking area (see Exhibit 3)

APPELLANTS: (a) Susan Young, Citizens for Responsible North Coast Planning; (b) George Jammal, Sierra Club; (c) David S. Kossack (see Exhibit 5)

FILE DOCUMENTS: Santa Cruz County Coastal Development Permit 95-0685 file; Santa Cruz County Certified Local Coastal Program (LCP) consisting of *1994 General Plan and Local Coastal Program for the County of Santa Cruz* and portions of the *County Code* and *Zoning Map*; aerial photographs; *Davenport Beach and Bluffs Addendum to the General Plan for the*

### **SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission determine that **a substantial issue exists** with respect to the project's conformance with LCP policies concerning visual resource protection, preservation of community character, promotion of visitor-serving land uses, protection of public access, adequate water and sewer supply, nonpoint source pollution control, and cumulative impacts. **Staff further recommends that the Commission approve a coastal development permit for a modified and substantially reduced project.** Major issues are summarized below; detail is provided in the substantive findings of this report.

#### ***Project Description***

This project proposes to renovate and expand a former agricultural packing shed to support a mixed use development of a restaurant, retail shops, conference meeting rooms, micro-juicery, warehouse, offices, five overnight accommodations, and a spa. The project is located between Highway One and the ocean, in the Town of Davenport in northern Santa Cruz County – a town of approximately 200 people surrounding for the most part by rural agricultural lands. The town is dominated by the presence of the Davenport Cement Plant, but is also a popular whale watching location and visitor-destination. Apart from the cement plant industrial facility, there are approximately 20,000 square feet of commercial, warehousing and manufacturing uses on the inland side of the highway; the existing building to be expanded is the only significant structure seaward of the Highway. Prior to this proposal, it was used for juice manufacturing and distribution.

The expansion would increase the total usable square footage of the building from 13,127 to 22,918 square feet, although the footprint of the building would only be increased by 234 square feet. It would also increase the profile of the building from 3-6 feet and thus the overall mass of the building as well. Finally, the County approved the construction of a 66-car parking lot on an open blufftop field, adjacent to the existing building, to support the new mixture of approved uses. This field has been used informally for parking for many years by people who stop to visit Davenport, or to access the beach, coastal bluffs, and enjoy the views of the ocean provided at this location. Overall, the proposed expansion raises a substantial issue with respect to Santa Cruz County LCP policies for a variety of reasons.

#### ***Community Character and Visual Resources***

First, a substantial issue is raised with respect to policies that require the preservation of public ocean vistas to the “maximum extent possible”; and the “protection of public vistas,” particularly from Highway One, by minimizing the disruption of landform and aesthetic character from grading, structure design, and other development. The LCP also requires the preservation and enhancement of existing community character in “special communities” such as Davenport; and requires that new development be consistent with existing development: “generally small scale, one or two story structures of wood construction.” By increasing the height and bulk of the existing building, the approved project would intensify the developed character of Davenport between the highway and the sea, and raise the threshold of the appropriate scale of

development in this “small-scale” community. It also would increase the amount of development visible from the beach.

The approved parking lot is equally problematic because it would detract significantly overall from existing seaward public views from Highway One, and will partially block whitewater views below a distant cliff. In addition, what is now an open, undeveloped field with some informal parking – part and parcel of Davenport’s “rustic” character and the foreground of existing ocean vistas – will be converted to formalized, greatly expanded parking lot. The foreground of the views at this location will be dominated by a mass of automobiles, and will inevitably alter the dusty informality of the existing lot.

Overall, the approved the development does not preserve ocean vistas to the “maximum extent possible” and as a whole, does not fit within the parameters of Davenport’s existing community character. These inconsistencies may be resolved, though, through conditions of approval that limit the reuse of the existing building to its current footprint and profile; limit new formalized parking on the adjacent blufftop to approximately one third of that approved by the County; require the lowering and screening of any parking lot construction that does occur on the blufftop; and that place an open space restriction on the remainder of the coastal bluff (and on a riparian zone to the south of the building). This will protect the existing shoreline vista as seen from Highway One, and as nearly as feasible maintain the visual “status quo” of the community’s character and scale. **(Conditions ID, IIIC, IVA, VIB )**

#### ***Visitor-serving Development***

Second, appellants challenge both the “special use” zoning use by the County to approve the various uses for the site, as well as the uses themselves. The procedure used by the County is not inconsistent with the LCP. In addition, most of the uses approved by the County are consistent with the intent of the Land Use Plan, particularly the visitor-serving uses of the restaurant, overnight rooms, etc. The LCP “encourages” the provision of visitor-serving commercial services in Davenport and also establishes such uses as priority development, second only to agriculture and coastal-dependent industry. However, given the need to reduce the scale and intensity of the development otherwise, there is no guarantee that the mix of uses will continue to observe the LCP and Coastal Act policies that establish visitor-serving development as a priority on locations such as the project site. Therefore, a substantial issue is raised. This LCP conflict may be resolved with the condition that requires that the mix of uses ultimately pursued, particularly the proposed offices, maintains an adequate visitor-serving component. **(Conditions IIH, VIA)**

#### ***Public Access***

Third, the Coastal Act and the Santa Cruz County LCP require the protection of existing public access to the sea. The LCP designates the Davenport bluffs and beach for primary public access. Historically, the public has accessed these areas across the bluffs, including the project site and, as mentioned, has used the project site for informal blufftop parking. While the approved project provides various public access amenities, including trail easements and a stairway to support vertical access, several substantial issues remain with respect to the design details of the these amenities -- as well as with

the impact of the proposed parking lot on existing informal public access parking that occurs on the site. There are no guarantees that the approved parking lot would be generally available for the type of parking that appears to have been occurring for at least 30 years. These inconsistencies may be addressed through conditions that widen the required access easements but that essentially affirm the County public access conditions. In addition, another condition preserves the ability for the public to continue parking on the site. **(Conditions III, IVA2, VD)**

#### ***Water and Sewer***

Fourth, the project is not strictly in compliance with LCP policies that require a showing of adequate water and sewer prior to issuance of a building permit. This is important because both the water and sewer systems in Davenport require improvements to maintain their adequacy for existing and new development. Currently, there is limited water filtration capacity for the town, and the LCP describes the San Vicente and Mill creeks, which provide Davenport's supply, as being utilized at full capacity. These creeks support riparian habitat for California red legged frog and steelhead.

As for wastewater, although there is adequate processing capacity, old collection lines into which excess water infiltrates have led to raw wastewater discharges into the Pacific Ocean. Therefore, any increase in flows, even the estimated eight percent from this project, is significant until the system is upgraded. As approved by the County, the project would contribute its fair share to the necessary improvements to the wastewater collection lines, which is a community-wide problem, but there were no assurances that those improvements would be in place prior to the issuance of the building permit as required by the LCP. Similarly, although the County-approved project would use much less water than has been historically used at the project site (5,300 gpd compared to 10,000 gpd), the project was not required to provide guarantees that improvements would be in place for delivering potable water above the current amount for which a water connection has been paid (4,216 gpd). Therefore, staff recommends approval of the project with conditions that require the applicants to either design a project that could be served by their existing water and wastewater service amounts or to provide guarantees that the necessary improvements will be in place prior to the issuance of their building permits, consistent with the County's LCP policies. **(Conditions VB, IVC)**

#### ***Nonpoint Source Pollution***

Fifth, as approved by the County, the project does not minimize impervious surfaces, inconsistent with the LCP. With the conditions that require a substantial reduction in the size of the parking lot, though, the project is consistent with the LCP policies concerning nonpoint source runoff. **(Conditions IIIG, VB, VIC, VIIIB)**

#### ***Cumulative Impacts***

Finally, a substantial issue is raised by the potential cumulative impacts of the approved project. In conjunction with other anticipated development in Davenport, the approved project could lead to adverse cumulative impacts to visual resources (because of future potential parking adjacent to the parcel); water and sewer availability (to the extent that approval is given prior to necessary improvements); and general redevelopment patterns in and around Davenport. Although the issue of future public parking will be

addressed through future planning efforts, other cumulative impact concerns are addressed through the implementation of development conditions that together, limit the scale and intensity of development with respect to visual resources, community character, water and sewer supply, and nonpoint source pollution.

***Conclusion***

Overall, as conditioned herein, the approved project would preserve significant public ocean vistas as well as the special character of the Town of Davenport. It would also give flexibility to the applicants to pursue a mixed-use, visitor-serving development within the context of the existing structure, while minimizing the impact of new parking development on the undeveloped adjacent bluff. It will be the applicants' responsibility to revise the proposed building design, uses, and parking lot configuration in a manner consistent with the permit conditions. It appears that approximately 33-45 spaces can fit in the delineated area, but the exact number will depend on such factors as location and number of loading zones and whether any of the lower lawn area (where the proposed greenhouse and boat house are shown) or lower floor of the building are utilized. The applicants can still have a two-story building, but may elect to have only one or only a partial second story. To the extent that they elect to retain the more intensively permitted uses (i.e., meeting rooms and restaurant that generate greater parking demands), then the less square footage of building space they will be able to occupy. One example of use allocations that would stay within the required parking would include a 2,000 square foot restaurant, four offices, 1,100 sq. ft. of retail, the boathouse, and 10 to 15 inn rooms.

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<b>EXHIBITS:</b>	
1. Location Maps	
2. County Findings and Conditions	
3. Selected Exhibits from County Approval	
Exhibit A . Architectural Plans prepared by Franks Brenkwitz and Associates dated March 4, 1998 consisting of 9 sheets:	
Sheet A-1 - Title Sheet (not reproduced in this report)	
Sheet A-2 - Site Plan	

Sheet A-3 - Landscape of Entire Site (not in this report)

Sheet A-3.1 - Landscape Plan of New Parking Lot (not in this report)

Sheet A-4 - Existing Floor Plan of Building (not in this report)

Sheet A-5 - Lower Floor Plan

Sheet A-6 - Upper Floor Plan

Sheet A-7 - Exterior Elevations

Sheet A-8 - Exterior Elevations

Exhibit B - Preliminary Grading and Drainage Plans prepared by Bowman and Williams dated March 4, 1998 consisting of 3 sheets:

Sheet C-1 - Plan View of Northwestern Portion of Site (not in this report)

Sheet C-2 - Plan View of Central Portion of Site (not in this report)

4. Revisions to Plans Required

5. Appellants' Contentions

a. Susan Young, Citizens for Responsible North Coast Planning

b. George Jammal, Sierra Club

c. David Kossack

6. Correspondence

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## **I. APPELLANTS' CONTENTIONS**

There are three appellants: (a) Susan Young, Citizens for Responsible North Coast Planning (RNCP); (b) George Jammal, Sierra Club (SC); (c) David S. Kossack (DK). The first two appeals are identical, except that the Sierra Club's adds two contentions not in the Citizens' appeal. Because of the length of the appeals, they are only briefly summarized here into seven categories. The full contentions are in Exhibit 5.

### ***Special Coastal Community and Visual Concerns:***

- The proposed parking lot would pave over the traditional whale-watching site historically used by tourists and residents alike. (RNCP; SC)
- The proposed parking lot would visually block access and detract from motorists' viewing of whales. (RNCP; SC)
- The project does not adequately protect the public vista and aesthetic values. (RNCP; SC)
- Proposed mitigation to lower parking lot three feet is inadequate as cars will impede visual access, and impact the aesthetics of historic Davenport and its whale-viewing site. (RNCP; SC)
- Grading will alter the landform. (RNCP; SC)
- The proposed project does not protect the Special Community of Davenport as it is inconsistent with other Davenport development in terms of height, bulk and physical scale. (RNCP; SC)

- The proposed 65 plus space parking lot will front nearly the entire length of Davenport and destroy the visual focus along Highway 1. (RNCP; SC)
- Davenport should be designated as a sensitive coastal resource area because it is a highly scenic area, it is a special community, which is a significant visitor destination, and it is an archaeological site. (SC)
- The project fails to conform with the Local Coastal Program in that it does not preserve ocean vistas. (DK)
- The project does not provide for the restoration of the Davenport Bluffs Scenic Area. (DK)

***Type of Land Uses Concerns:***

- Santa Cruz County approved a change in use from Neighborhood –Commercial (C-1) zoning to Special Use (SU) without amending the Local Coastal Program as required by Public Resources Code Sections 30510-30514. (RNCP; SC)
- The proposal fits none of the criteria for SU zoning. (RNCP; SC)
- The zoning change violates the Local Coastal Program as it allows for Visitor accommodations, which are not listed as a Neighborhood Commercial use. (RNCP; SC)
- Zoning change from its current “C-1” (Neighborhood Commercial) zone district to a “SU” (Special Use) violates the Coastal Act. (DK)
- To rezone the present project to a “SU” (Special Use) mixed-use commercial zone district from its currently approved land use as an agriculture related structure does not conform with the Local Coastal Program as it converts priority agricultural use to non-priority mixed use commercial. (DK)
- The conversion around 1983 to the building’s present use as a juice manufacturing facility has apparently never been approved by the County suggesting that the most appropriate approved use for the structure remains a Brussels sprout packing shed. (DK)
- Visitor accommodations will displace opportunity for legitimate Neighborhood Commercial uses to serve the community of Davenport. (DK)

***Parking, Circulation, and Public Access Concerns:***

- Increased traffic on a highway already severely impacted by logging trucks, cement trucks, visitor traffic, and peak summer month traffic was not adequately addressed. (RNCP; SC)
- The project does not provide clear, coordinated, safe circulation. (RNCP; SC)



- Pedestrian access to the ocean will be impeded by increased traffic on Highway 1 caused by an estimated 466 extra daily trips. (SC)
- The myoporum trees planted further impede physical access. (SC)
- Physical access is further impeded by the developers' proposed stairway to the beach because pedestrians must walk through a 65+ car parking lot to reach the stairway, and at the bottom of the proposed stairway pedestrians must walk along the railroad track for an extra 220 yards before reaching a path down to the beach. (SC)
- The present project's parking formula does not provide for the necessary parking facilities identified in General Plan Figure 2-5 and thus limits access to these Davenport priority sites. (DK)
- The Variance to the 10 foot minimum front yard set back does not conform with the Local Coastal Plan because it is inconsistent with the character of Davenport in addition to contributing to a hazardous condition along Highway 1. (DK)
- The present project fails to provide necessary on-site recreational transit facilities, including parking spaces for buses and shuttle services to accommodate additional tour and whale watching excursion buses generated by the development's visitor services. (DK)

***Public Service Concerns:***

- There is a question as to whether public services are adequate to accommodate the project. (RNCP; SC))
- The Davenport sewage system is not capable of serving the project's sewage needs. (RNCP; SC)
- There is a question as to whether the project will negatively impact Davenport's water source, San Vicente Creek, and thus potentially impact the habitat of state endangered species, such as coho salmon; and federal threatened species, including the red-legged frog, steelhead trout, and coho salmon. (RNCP; SC)
- The project will have tremendous cumulative impacts on water and sewer. (DK)
- The present project does not conform to the Local Coastal Program because it did not acquire, and does not have on record, a letter demonstrating the availability of adequate water supply for the proposed development nor address its cumulative and growth-inducing impacts. (DK)
- The present project does not have a letter from the Davenport Water and Sewer District stating that the required level of service for sewer discharge will be available *prior to issuance of building permits*. (DK)

***Archaeological Concerns:***

- The archaeological reconnaissance for the project was limited to surface inspection. (RNCP; SC)

***Non-point Source Pollution Concerns***

- The present project does not address the additional surface runoff generated by installing impervious surfaces (e.g., parking lots) as the surface runoff leaving the grease traps is released onto an adjacent parcel. (DK)

***Cumulative and Growth-Inducing Impact Concerns:***

- The County did not address the project in terms of its cumulative impacts on current and probable future development. (RNCP; SC)
- The County did not address the cumulative impacts of the potential development of packing sheds on the west side of Highway 1 created by this precedential decision. (RNCP; SC)
- The project would be the only visitor-serving commercial development on the west side of Highway 1 from Pigeon Point in San Mateo County to the City of Santa Cruz and would have precedential impacts that open up coast to development and cumulatively impact the visual qualities of this scenic road. (RNCP; SC)
- The project will encourage development on three adjacent parks and recreation parcels, which will individually and cumulatively significantly degrade the coastal view and is, thus, incompatible with the continuance of the adjacent recreation areas. (RNCP; SC)
- The project induces expansion outside the Rural Services Line. (DK)
- The cumulative and growth inducing impacts of identifying adjacent oceanside parcels for development and specifically providing vehicular access to them does not conform with the Master Plan Requirement for priority sites. (DK)
- Since the project is the first commercial retail on the west side of Highway 1 between Santa Cruz and Half Moon Bay, it is not unreasonable to assume that the additional developments will be of equivalent magnitude of the present project. (DK)
- The present project does not conform with the Local Coastal Program because of its cumulative impacts on water and sewer and other infrastructures and native habitats. (DK)

## **II. LOCAL GOVERNMENT ACTION**

The Santa Cruz County Board of Supervisors approved a coastal development permit with 58 conditions on October 20, 1998 in conjunction with other related actions: findings for a Commercial Development Permit to amend Permit 74-124-U and 84-0230, a Variance to reduce the minimum 10 foot front yard setback to 0 feet, and Preliminary Grading Approval (see Exhibit 2). The County concurrently rezoned the property from the C-1 Neighborhood Commercial zone district to the "SU" (Special Use) zone district. The County's certified local coastal program provides that this type of rezoning is not considered a local coastal program amendment. A Mitigated Negative Declaration was approved for compliance with the California Environmental Quality Act (CEQA). The County's complete final action was received by the Coastal Commission on October 29, 1998, triggering an appeal period running from October 30, 1998 through November 13, 1998.

## **III. STANDARD OF REVIEW FOR APPEALS**

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the sea and the first public road paralleling the sea and because it does not contain principal permitted uses.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea and, thus, this additional finding must be made in a *de novo* review in this case.

#### IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission first determine that **substantial issue** exists with respect to some of the grounds on which the appeal was filed, pursuant to Coastal Act Section 30603. (Note: unless the Commission wishes to debate substantial issue, no formal vote is required. Substantial issue is presumed and the hearing on the de novo permit can immediately commence.)

**MOTION:** Staff recommends a “NO” vote on the following motion:

“I move that the Commission determine that Appeal No. A-3-SCO-98-101 raises no substantial issue with respect to the grounds on which the appeal has been filed.”

A majority of the Commissioners present is required to pass the motion.

#### V. STAFF RECOMMENDATION ON COASTAL PERMIT

The staff recommends that the Commission, after public hearing, **approve** the Bailey-Steltenpohl coastal development permit with conditions.

**MOTION:** Staff recommends a “YES” vote on the following motion:

“I move that the Commission APPROVE coastal development permit A-3-SCO-98-101, subject to the conditions below.”

A majority of Commissioners present is required to pass the motion.

#### **RESOLUTION:**

The Commission hereby **grants** a permit for the proposed development as conditioned below, on the grounds that, as conditioned, it will be in conformity with the certified Santa Cruz County Local Coastal Program, that it is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, and that there are no additional feasible mitigation measures that would lessen any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).

## VI. RECOMMENDED CONDITIONS

### **Standard Conditions**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **Special Conditions**

*Note: Changes to County conditions are shown with ~~strikeout~~ and underline. Conditions in italics are imposed by the local government pursuant to an authority other than the Coastal Act and remain in full force and effect. No changes shall be made to those conditions in italics that change the effect of any of the other conditions in plain text, without a coastal permit amendment.*

- I. The development approved by this permit and the special reporting requirements are specified below.
  - A. This permit authorizes the construction of a commercial mixed use building with up to two residential dwelling units to be constructed in up to three phases and associated parking areas ~~according to Exhibit A;~~ and the grading necessary to construct the ~~new~~ parking area in accordance with a

full set of revised plans (see I.D below)-Exhibit B. The permit includes a Variance to reduce the front yard setback to 0 feet for a 53 lineal foot portion of the building ~~The construction phases are as follows:~~

~~Phase 1 - Reconstruction of the northwest half of the existing building to include restaurant/cafe, retail shops and conference meeting rooms on the upper floor and micro-juicery and warehouse and 3 offices on the lower floor and the new 66 vehicle space parking lot.~~

~~Phase 2 - Reconstruction of the southeast half of the existing building to include 1 office and 3 visitor accommodation units on the upper floor and 1 office, a day spa, 2 visitor accommodation units and 1 dwelling (for caretaker) on the lower floor and renovation of the existing parking lot to provide for 13 vehicle spaces~~

~~Phase 3 - Construction of a detached greenhouse of 750 square foot greenhouse and "boat house" dwelling as shown on sheet A-3 of Exhibit A.~~

~~Phases 1 and 2 may be implemented either separately or simultaneously. However, separate implementation will require total completion of phase 1 before commencing phase 2. In any case, phase 3 shall not occur until phases 1 and 2 are completed.~~

B. This permit supersedes all previous discretionary permits approved for this parcel.

C. *If the applicants elect to construct the project in phases, this permit shall be reviewed by the Planning Commission at the end of each development phase to determine if all permit conditions have been adequately implemented. In the case of simultaneous implementation of phases 1 and 2, the Planning Commission shall review the project initially, upon completion of the 66 vehicle parking lot and sequentially after the completion of all phase 1 and 2 requirements. The Planning Commission shall schedule the public hearing review of this permit if, during the Commission's review of a status report prepared by Planning staff, it is determined that a public hearing will facilitate compliance with the requirements of this permit.*

D. The entire set of plans in Exhibit A, Architectural Plans and Exhibit B Grading Plans must be revised as follows and submitted for Executive Director review and approval, PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT:

1. All structural improvements shall be made within the existing footprint and profile of the main building, except for decks and outbuildings. The footprint shall be reduced to conform to the plans

in Exhibit 2 and the Variance approval, removing the portion in the Caltrans right-of-way to a setback of four feet at ground floor level. The profile of the main building is established by the existing elevation of the highest point of the roof above sea level.

2. Parking must be shown within the lower area of the property, as depicted on Exhibit 4, (the lower floor of the building may be used for parking). If additional parking is necessary, it must be shown within the upper portion of the property as depicted on Exhibit 4. All parking spaces on the surface of this upper area shall be recessed a minimum of five feet below the existing profile of the southern (seaward) edge of Highway One (as shown on Exhibit B). If retaining walls are utilized to achieve this final grade, they shall be located or screened so as not to be visible from Highway One. The perimeter of this upper parking lot must be physically delineated (e.g., with split rail fencing, boulders). Unpaved areas beyond shall be revegetated in a manner that protects views and restricts parking in the undesignated area. Loading, bicycle parking, handicapped parking, access thereto and to the building must also occur within either the upper or lower areas depicted on Exhibit 4.
3. All detached structures, including the proposed greenhouse, boat house, and storage shed, must be shown on the final plans, including elevations.

II. Prior to exercising any rights granted by this permit, including without limitation, **any** construction or site disturbance, the applicant/ owner shall provide evidence to the Executive Director that the following have occurred:

- A. *Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.*
- B. *Obtain a Building Permit for ~~Phase 1~~ of the project from the Santa Cruz County Building Official. Construction drawings for phase 1 shall conform to Exhibit A. Building Permits for phases 2 and 3 of the project shall be required. Construction drawings for these two phases shall also conform to Exhibit A. Building Permits for these construction phases shall be issued after the Building Permit for phase 1 has been finalized if phases 1 and 2 are constructed separately.*
- C. *Obtain a Grading Permit from the County of Santa Cruz Planning Department. This requires submittal of a grading permit application to the building counter of the Planning Department, including two copies of complete grading, drainage, and erosion control plans in conformance with minimum County standards. The permit fee in effect at the time of*

*submittal shall be paid. Final Grading Plans shall conform to Exhibit B, as will be revised. (Refer to Condition III.F.IV.A.11). Submit final engineered drainage plans to County Planning for review and approval as part of the Grading Permit application submittal.*

- D. *Pay a Negative Declaration filing fee of \$25.00 to the Clerk of the Board of the County of Santa Cruz as required by the California Department of Fish and Game mitigation fees program.*

III. Prior to issuance of a ~~Building Permit~~ coastal development permit for phase 1 of the project the applicant/owner shall:

- A. Execute and record a document, in a form and content acceptable to the Executive Director, which shall dedicate to Santa Cruz County two permanent public easements for public pedestrian access toward the shoreline. The first area of dedication shall consist of a corridor at least ten feet wide encompassing the existing trail located southeast of the existing building extending from the northern to southern property line as shown on Exhibit 4. The second area of dedication shall consist of a corridor at least ten feet wide extending from the northern to southern property line northwest of the permitted parking lot as shown on Exhibit 4. The recorded document shall include legal descriptions of both the applicants' entire parcel and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. Dedicate a permanent public easement for pedestrian beach access over the existing trail located southeast of the existing building. The easement document shall be reviewed and approved by County Planning staff and County Counsel prior to recordation of the document.
- B. ~~Dedicate a permanent public easement over the existing trail paralleling the coastal side of the rail road tracks and a route that joins this trail to Highway 1 that includes the new stairway described in conditions III.E and V.D for pedestrian beach access. This easement will include 4 foot wide strip of land across the parking lot from the stairway to the Highway 1 right-of-way. Execute and record a document, in a form and content acceptable to the Executive Director, which shall dedicate to Santa Cruz County a permanent public easement for public pedestrian access parallel to the shoreline. The area of dedication shall consist of a corridor at least ten feet wide immediately adjacent to the seaward boundary of the parcel from the northerly to southerly property line as shown on Exhibit 4. The recorded document shall include legal descriptions of both the applicants' entire parcel and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The easement document shall be reviewed and approved by County Planning staff and County Counsel prior to recordation.~~



- C. ~~Dedicate a permanent right-of-way over the driveway entrance to the 66 vehicle parking lot and a connecting route of a least 20 feet in width to adjoin with A.P.N. 58-121-03 for the purpose of providing shared vehicle access with A.P.N. 58-121-03 if that parcel is developed in the future. The right-of-way document shall be reviewed and approved by County Planning staff and County Counsel prior to document recordation. Execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the following restriction on development, in the designated riparian and view corridor open space as shown in Exhibit 4. The riparian corridor and its associated buffer area to be protected is shown in Exhibit 4; alternatively, that area may be more precisely delineated by a qualified biologist and submitted to the Executive Director for review and approval. Such delineation shall be in accordance with the provisions of County Code Section 16.30.030 (definitions of riparian corridor and riparian woodland).~~

No development, other than specifically authorized by these permit conditions, as defined in section 30106 of the Coastal Act, shall occur in the open space area except for: vegetation removal for fire management, removal of non-native vegetation, or planting of native vegetation. Rail transport and public access improvements and use are permitted within the open space area.

The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

- D. Obtain an Encroachment Permit from Caltrans for the installation and maintenance of landscaping as shown on sheet A-3.1 of Exhibit A as may be revised.
- E. ~~Obtain a Building Permit for~~ Include on the submitted plans the construction of a public pedestrian stairway to traverse the slope at the northwestern portion corner of the site as shown on sheet A-3.1 of Exhibit 4 A. The construction drawings shall be reviewed and approved by a geotechnical engineer.
- F. ~~Obtain a Grading Permit. This requires submittal of a grading permit application to the building counter of the Planning Department, including two copies of complete grading, drainage, and erosion control plans in conformance with minimum County standards. The plans shall conform to Exhibit B of this permit. The permit fee in effect at the time of submittal shall be paid. To prevent any soil or bluff instability problems on the project site, all project development shall follow the recommendations of~~

~~the geotechnical report prepared for this project by Reynolds and Associates dated May 5, 1997 and its addendum report, including the requirement that all grading and paving associated with the new parking lot be set back a minimum of 25 feet from the edge of the bluff that borders the southwestern edge of the parcel. All requirements of the approved Grading Permit are, by reference, hereby incorporated into the conditions of this permit.~~

No land clearing, grading or excavating shall take place between October 15 and April 15 unless a separate winter erosion-control plan is approved by the Planning Director.

- G. ~~Submit final engineered drainage plans to County Planning for review and approval as part of the Grading Permit application submittal. Final grading plans shall conform to Exhibit B of this permit. Include on the submitted plans provisions to accomplish the following:~~ To prevent discharges from carrying silt, grease and other parking lot contaminants, the final drainage plan shall incorporate a silt and grease trap at the most downstream inlet of the parking lot drainage facilities.
  - H. Execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the restriction on uses limited to those specified in Condition VI.A. The deed restriction shall include a legal description of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
- IV. Prior to the issuance of a coastal development permit and a Building Permit ~~for any of the 3 construction phases,~~ the owner/applicant shall:
- A. Submit construction drawings that are in substantial conformance with Exhibit A, as will be modified and which include the following:
    - 1. Exterior elevations identifying finish materials and colors in conformance with condition IV.A.12 of this permit.
    - 2. Floor plans identifying each room and its dimensions, the intended use (from the list in condition VI.A), and the required parking. The building plans and uses shall not generate a parking demand greater than the amount of parking allowed by condition I.D.2 and shown on the revised site plan. Public uses of the site, beyond those attributable to other specific building uses, shall be factored in as requiring at least five parking spaces.

3. Provide complete screening from public view of all rooftop mechanical and electrical equipment.
4. A site plan showing the location of all site improvements, including but not limited to, points of ingress and egress, parking areas, loading areas, turnarounds, trash and recycling enclosures, utility connections, easements ~~and pedestrian trail routes, and other access-related features.~~
5. All new electrical power, telephone and cable television service connections shall be installed underground. Pad mounted transformers shall not be located in the front setback or in any area visible from public view unless they are completely screened by walls and/or landscaping or installed in underground vaults. Utility meters, such as gas meters and electrical panels shall not be visible from public streets or building entries.
6. A final sign plan showing dimensions, location, material and colors. No sign illumination is allowed. Plastic shall not be used as a sign material. Commercial signage shall be limited to one freestanding sign at each project entrance. Both signs shall be designed to be consistent with the architectural character of the main building and as an integral part of the landscape area. Both signs must be set back 5 feet from the edge of the Highway 1 right-of-way and shall not obstruct sight distance of motorists or pedestrians. The maximum height of each sign is 7 feet above grade. The maximum total aggregate sign area of both signs is 50 square feet.
7. Parking, loading and circulation areas shall be surfaced with a minimum of 2 inches of concrete finished as colorized stamped concrete ~~as specified in Exhibit C of this permit. The pedestrian route from the edge of Highway 1 to the stairway described in condition III.F shall be defined with another type of paving material such as interlocking concrete paver block.~~
8. The ~~two~~ parking areas shall include ~~79~~ sufficient parking spaces (of which 40% may be designed to compact car standards) to meet the requirements of the County Code Section 13.10.552 (i.e., 1 space per 1000 sq. ft. of restaurant/café; 1 space per 600 ft. of manufacturing; 1 space per 1000 sq. ft of warehouse; 1 space per 200 sq. ft. of office; 1 space per 33 sq. ft. of conference and seminar meeting rooms; 1 space per 200 sq. ft. of retail sales; 1 space per 200 sq. ft. of public buildings and grounds, 2 spaces per one bedroom residential dwelling unit and 1 space per Type A overnight accommodation habitable room). ~~Four~~ One of the spaces at each lot must be designed as a handicapped accessible parking space. These spaces shall be ~~located as shown on the~~

~~required revision of Exhibit A. Twenty-three b~~ Bicycle parking spaces shall also be provided as and shown on Exhibit A according to Code Section 13.10.552. All spaces and loading berth(s) shall ~~be delineated by a variation in the color and pattern of the stamped concrete surfacing and~~ defined by wheel stops. The size of each standard parking space shall be not less than 18' X 8-1/2'. Compact spaces shall be at least 16' X 7-1/2'. Handicapped accessible spaces shall be 18' X 14'. Each bicycle space shall be 6' X 2' in size and equipped with a parking rack to support the bicycle and be of sufficient material and strength to prevent vandalism and theft.

9. ~~At least 2~~ Loading spaces (sized 45' X 14') shall be provided, if necessary (i.e., if retail or warehouse use is included) and designed in accordance with sections 13.10.570 -.571 of the County Code.
10. The lighting of all parking and circulation areas shall be limited to pedestrian oriented lighting not to exceed 3 feet in height. This lighting shall be minimized to the amount necessary for safety purposes. One such light standard on each side of each driveway entrance to the project shall be permitted. Other lighting shall be located where necessary to allow safe pedestrian use of the parking area at night. All lighting shall be designed so it does not produce any glares off-site.
11. Follow all recommendations of the geotechnical report prepared by Reynolds and Associates for this project dated May 5, 1997 and its addendum, regarding the construction and other improvements on the site, including the requirement that all grading and paving associated with the parking lot be setback a minimum of 25 feet from the edge of the bluff that borders the southwestern edge of the parcel. All pertinent geotechnical report recommendations shall be included in the construction drawings submitted to the Executive Director of the Coastal Commission and the County for a Building Permit. All recommendations contained in the County acceptance letter(s) dated November 3, 1997, shall be incorporated into the final design. A plan review letter from the geotechnical engineer shall be submitted with the plans stating that the plans have been reviewed and found to be in compliance with the recommendations of the geotechnical engineer.
12. To further minimize the visual impact of the main project building to insignificant levels and allow ocean vistas to be retained at the northwest portion of the parcel, these features shall be incorporated into the project:

- a. The exterior colors at the main project building shall be earthen tone colors that blend with the surrounding landscape or corrugated metal siding replicating an agricultural building, ~~both of which have been approved by County Planning;~~
  - b. The landscape plan prepared for this project prepared by Franks Brenkwitz and Associates dated March 4, 1998 (sheet A-3.1 of Exhibit A) and as modified to conform to the required revised design shall be implemented prior to final inspection and clearance of the Building Permit for ~~phase 4~~ of the project;
  - c. Any fencing in the vicinity of the parking lot shall be limited to the rustic split rail fencing shown on the landscape plan that restricts access to the edge of the bluff southwest of the parking lot.
13. *Final plans shall note that Davenport Water and Sanitation District will provide water service and sewer service and shall meet all requirements of the District including payment of any connection and inspection fees as specified in the two following conditions below. Final engineered plans for water and sewer connection shall be reviewed and accepted by the District.*
- B. ~~To prevent over utilization of the Davenport Water and Sanitation District's domestic water supply, the owner/applicant shall~~ Provide revised calculations of water use based on the required revised plans and provide the necessary improvements to the District water treatment plant as determined by the District for an the additional 3,000 number of gallons/day of domestic water use that is calculated. The installation of improvements may be spread over a time period specified by the District. ~~as long as, at least one-half of the necessary improvements are installed prior to the final inspection and clearance of the Building Permit for phase 1 of the project and all remaining improvements are completed prior to the final inspection and clearance for phase 2 occupancy~~ If the revised calculations result in a projected water use greater than 4,216 gpd (as verified by County Public Works Department), then the applicants shall submit a revised, updated written commitment from the water purveyor guaranteeing that the required level of service for the project will be available prior to the issuance of building permits. Alternatively, the permittee may construct the project in phases, with Phase 1 uses limited to requiring an estimated water use of 4,216 gpd and subsequent phases linked to updated written service commitments for the corresponding amount of projected additional water use.
- C. To prevent over capacity problems from being exacerbated from project sewage discharges into the Davenport Water and Sanitation District's

sewer system, the owner/applicant shall pay the appropriate sewer connection charges, as calculated by the District, to pay for the necessary sewer system upgrades. The applicants shall provide revised wastewater calculations based on the revised water calculations. If the revised calculations result in a projected wastewater generation of greater than 1,455 gpd (as verified by County Public Works Department), then the applicants shall submit a revised, updated written commitment from the wastewater agency guaranteeing that the required level of service for the project will be available prior to the issuance of building permits. Alternatively, the permittee may construct the project in phases, with Phase 1 uses limited to generating an estimated 1,455 gpd and subsequent phases linked to updated written service commitments for the corresponding amount of projected additional wastewater generation. At least 50% of the total fee charges shall be paid prior to the issuance of a Building Permit for phase 1 of the project. An additional payment of at least 43% of the total charges shall be paid prior to issuance of the Building Permit for phase 2 construction. The remaining 7% of the total charges shall be paid prior to issuance of the Building Permit the phase 3 construction. A Certificate of Occupancy shall not be issued by County Planning for any construction phase until the planned sewage system improvements have been completed by the Davenport Water and Sanitation District.

D. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide evidence that the following measures have been satisfied:

1. Meet all requirements and pay the appropriate plan check fee of the California Department of Forestry and Fire Protection.

~~E. 2.~~—Pay the Santa Cruz County Park Dedication fee in effect at the time of Building Permit issuance for phase 3. On March 25, 1998, this fee would total \$ 538.00 for a 1 bedroom single-family dwelling.

~~F. 3.~~—Pay the Santa Cruz County Child Care fee in effect at the time of Building Permit issuance. On March 25, 1998 the fee is calculated as follows:

a. \$0.12/square foot of warehouse floor area;

2.b \$0.23/square foot of floor area for all other approved commercial and visitor-serving uses; and

3.c \$109.00/bedroom for single-family dwellings ~~(phase 3).~~

~~G. 4.~~——Meet all requirements of the Department of Public Works and pay all fees for Zone 4 Santa Cruz County Flood Control and Water

*Conservation District including plan check and permit processing fees.*

*H. 5.———Submit a written statement signed by an authorized representative of the Pacific School District and the Santa Cruz High School District in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district in which the project is located.*

V. All construction shall conform to the approved plans ~~issued for a Grading Permit and separate Building Permits.~~ The following requirements shall be met during all grading and construction activities:

- A. To prevent this project from contributing to accelerated filling of either the City or County of Santa Cruz landfills, the owner/applicant shall have the all excess fill material from grading activities that is removed from the site transported to Big Creek Lumber Company on Highway 1 for use as 6 inch cover on the surface of their staging yard or transported to another County approved fill site. If the fill site is in the coastal zone, then its use for receiving fill must be authorized by a coastal development permit or by a valid County permit that predates the California Coastal Act.
- B. To control all surface drainage and prevent erosion impacts, the owner/applicant shall implement an engineered drainage plan that conforms to the preliminary engineered drainage plan prepared for the project by Bowman and Williams dated March 4, 1998 (Exhibit B). The final approved plan shall be implemented as part of the Grading Permit for this project. A silt and grease trap shall be installed as discussed in condition III.G above at the same time other drainage improvements are installed. All improvements specified in the approved plan shall be installed prior to final inspection and clearance of the Building Permit for phase 1 of the project.
- C. To minimize dust impacts to surrounding properties ~~during excavation for the new parking lot,~~ the owner/applicant shall have a water truck on the site during all major grading activities and shall have all exposed earthen surfaces water sprayed at frequencies that prevent significant amount of dust from leaving the project site.
- D. To prevent increased erosion of the steep bluff face that borders the southwestern edge of the parcel from increased pedestrian traffic, the owner/applicant shall construct a pedestrian stairway to traverse this bluff face and repair the three areas of pedestrian induced erosion on the bluff face prior to occupancy final inspection and clearance of the Building Permit for phase 1 of this project. The stairway shall be located within the required easement area and to provide access from the southwest corner of the new parking lot. ~~The stairway shall be constructed according to the~~

approved ~~Building Permit~~ plans for this improvement (Refer to condition III.E)

- E. *To minimize noise impacts to insignificant levels to users of the project building, all building construction shall meet noise insulation requirements for residential and commercial buildings as specified in the Uniform Building Code.*
- F. To prevent operational conflicts from occurring from project generated traffic, the owner/applicant shall make the following improvements ~~prior to completion of phase 2 of the project:~~
  - a. Realign the south project entrance driveway to be located directly opposite Davenport Avenue to create a “4-legged” intersection with Highway 1 according to Caltrans specifications; and
  - b. ~~Provide striping and signage on Highway 1 as approved by Caltrans which advises northbound motorists that northbound left turns into the south driveway entrance to the project are disallowed.~~  
comply with any additional CALTRANS requirements.
- G. All new electrical power, telephone, and cable television service connections shall be installed underground.
- H. *All improvements shall comply with applicable provisions of the Americans With Disabilities Act and/or Title 24 of the State Building Regulations.*
- I. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100 shall be observed.
- J. All construction shall be performed in accordance with the approved plans. The applicant shall provide evidence to the Executive Director (within 5 days of their completion) that the following conditions have been satisfied. Prior to final building inspection and building occupancy for each construction phase, the owner/applicant shall meet the following conditions:
  - 1. All site improvements shown on the final approved Building Permit plans shall be installed;



2. *All inspections required by the Building Permit shall be completed to the satisfaction of the County Building Official; and*
3. The project geotechnical engineer shall submit a letter to the Planning Department verifying that all construction has been performed according to the recommendations of the accepted geotechnical report. A copy of the letter shall be kept in the project file for future reference.

VI. Operational Conditions.

- A. This permit constitutes a Master Occupancy Program for the project site. Those "C-1" and "CT" zone district uses specified below shall be authorized to occupy the subject building provided that a Level 1 Change of Occupancy Permit is issued by the County of Santa Cruz Planning Department. No use or combination of uses will be allowed which requires more parking than available on site confined to the areas designated for parking pursuant to condition I.A and consistent with the limitation of condition IV.A.2. In no case shall more than 50% of the occupied square footage be allocated to non-visitor serving uses. The "C-1" and "CT" zone district uses allowed on the site are as follows:
  1. Restaurant/cafe
  2. Micro-juicery and warehouse associated with a restaurant and/or café in Davenport
  3. Offices, not to exceed 50% of the floor area of the building, and associated with the permitted restaurant/café, conference, seminar, visitor-oriented retail, spa, or visitor accommodation uses or associated with agricultural or marine products.
  4. Conference and seminar facilities
  5. Neighborhood scale retail sales (See County Code Section 13.10.332)
  7. Two residential dwelling units
  8. Day spa, sauna, hot tub uses
  9. "Type A" overnight visitor accommodations (See County Code Section 13.10.332)
- B. All landscaping shall be permanently maintained with the species specified on the landscape plan. Replacement of any tree or shrub fatalities shall be done with the same species as shown on the plan or a

species with nearly identical characteristics as approved by County Planning. Parking lot landscaping shall always be limited to ground cover and low growing (~~less than 2-1/2 feet in height~~) shrubs. The shrubs shall be maintained in good condition to provide maximum screening, but at no time shall they block the view of the shoreline at the base of the cliffs as seen from Highway One. All hedges surrounding the project buildings shall be permanently maintained as follows. The Monterey cypress hedge at the southeast and northwest ends of the building shall be maintained with a cut height of 7 feet and a maximum growth height of 9 feet. The *Myoporum* hedge parallel to Highway 1 shall be maintained with a maximum height that does not exceed the height of the main building. The maintenance of landscaping shall include the following practices:

1. Soil Conditioning. In new planting areas, soil shall be tilled to a depth of 6 inches and amended with six cubic yards of organic material per 1,000 square feet to promote infiltration and water retention. After planting, a minimum of 2 inches of mulch shall be applied to all non-turf areas to retain moisture, reduce evaporation and inhibit weed growth.
2. Irrigation Management. All required landscaping shall be provided with an adequate, permanent and nearby source of water which shall be applied by an installed irrigation, or where feasible, a drip irrigation system. Irrigation systems shall be designed to avoid runoff, overspray, low head drainage, or other similar conditions where water flows onto adjacent property, non-irrigated areas, walks, roadways or structures.
3. Appropriate irrigation equipment, including the use of a separate landscape water meter, pressure regulators, automated controllers, low volume sprinkler heads, drip or bubbler irrigation systems, rain shutoff devices, and other equipment shall be utilized to maximize the efficiency of water applied to the landscape.
4. Plants having similar water requirements shall be grouped together in distinct hydrozones and shall be irrigated separately.
5. The irrigation plan shall show the location, size and type of components of the irrigation system, the point of connection to the public water supply and designation of hydrozones. The irrigation schedule shall designate the timing and frequency of irrigation for each station and list the amount of water, in gallons or hundred cubic feet, recommended on a monthly and annual basis.
6. Landscape irrigation should be scheduled between 6:00 p.m. and 11:00 a.m. to reduce evaporative water loss.

- C. All installed drainage facilities shall be permanently maintained. The silt and grease trap shall be maintained on a regular basis according to the following monitoring and maintenance procedures:
1. The trap shall be inspected to determine if it needs to be cleaned out or repaired at the following minimum frequencies:
    - a. Prior to October 15 each year;
    - b. Prior to April 15 each year; and
    - c. During each month it rains between November 1 and April 1.
  2. A brief annual report shall be prepared by the trap inspector at the conclusion of each October 15 inspection and submitted to the property owner and to County Public Works staff within 15 days of this inspection. This monitoring report shall specify any repairs that have been done or that are needed to allow the trap to function adequately.
- D. The stairway discussed in condition V.D above shall be permanently maintained in good condition by the property owner. Similarly, the earthen pedestrian trails described in conditions III.A and III.B above shall be maintained free from erosion and obstructions by the property owner.
- E. *Any live or recorded music played on the premises shall not be heard beyond the subject property. No music shall be played within the 66-vehicle parking lot.*
- F. *The hours for retail and public food serving uses shall be limited to 6:00 a.m. to 9:00 p.m.*
- G. *Busses must park in the lower parking lot and only use the ~~new 66-vehicle upper parking lot~~ to discharge passengers. The operators of the premises may also direct other vehicles to use the lower lot, such as visibly large vehicles or vehicles associated with longer-term parking. Otherwise, except for the marked disabled space, the upper parking lot's use shall not be restricted, nor have specific reservations of spaces. A separate coastal permit or amendment to this permit is required for any additional development of the upper parking lot, including any fencing or gating or change in access thereto.*
- H. *In the event that there is non-compliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.*

VII. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
  - 1. COUNTY bears its own attorney's fees and costs; and
  - 2. COUNTY defends the action in good faith.
- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement with regard to the County unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.
- E. Within 30 days of the issuance of this development approval, the Development Approval Holder shall record in the office of the Santa Cruz County Recorder an agreement which incorporates the provisions of this condition, or this development approval shall become null and void.

VIII. Mitigation Monitoring Program

*The mitigation measures listed under this heading have been incorporated into the conditions of approval for this project in order to mitigate or avoid significant effects on the environment. As required by Section 21081.6 of the California Public Resources Code, a monitoring and reporting program for the above mitigations is hereby adopted as a condition of approval for this project. This monitoring program is specifically described following each mitigation measure listed below. The purpose of this monitoring is to ensure compliance with the environmental mitigations during project implementation and operation. Failure to comply with the conditions of approval, including the terms of the adopted monitoring program, may result in permit revocation pursuant to Section 18.10.462 of the Santa Cruz County Code.*

**A. Mitigation Measure: Conditions III.F and IV.A.11 (Prevention of Soil Instability)**

*Monitoring Program: The Grading Permit and Building Permit for phase 1 will not be issued by County Planning until a geotechnical engineer's review and approval letter is submitted specifying plan conformance with the geotechnical report. Planning staff inspection for the Grading Permit will include verification of the required 25-foot setback from the top of the steep slope. Neither the Building Permit nor the Grading Permit will be finalized without a final inspection and approval letter from the project geotechnical engineer. All review letters shall be permanently retained in the project file.*

**B. Mitigation Measure: Conditions III.G, V.B. and VI.C (Provide and Monitor Silt and Grease Traps)**

*Monitoring Program: The Grading Permit and Building Permit for phase 1 will not be issued by County Planning without the appropriate number of silt and grease traps identified on the final drainage plan. Planning staff inspection of the Grading Permit and sign-off for the Building Permit will not occur until the traps have been installed according to the approved plans. The owner/applicant shall submit monitoring reports, as specified by condition VI.C to the Drainage Section of the County Public Works Department. Public Works will advise County Planning of any problems with trap maintenance or non-receipt of monitoring reports. In that case, Planning will contact the property owner and take appropriate enforcement action to correct the problem.*

**C. Mitigation Measure: Condition IV.A.12 (Minimization of Visual Impacts)**

*Monitoring Program: The requirements of this condition will be checked during plan review ("Zoning Plan Check") of the construction drawings submitted for Building Permits. A Building Permit for phase 1 and subsequently phase 2 will not be issued until the drawings conform with the requirements of this permit condition. Planning staff will verify all*

*requirements have been met in the construction of the project before holds on the Building Permits for each construction phase have been released. Photos of each completed phase of the project will be taken at the time the hold is released and permanently retained in the project file.*

- D.** *Mitigation Measure: Condition IV.B (Improvements to the Water Treatment facilities of the Davenport Water and Sanitation District)*

*Monitoring Program: The owner/applicant shall enter into an agreement with the DWSD to provide the needed improvements to the domestic water system as required by condition IV.B. The Building Permit for each phase of construction will not be issued by County Planning until a written notification from the DWSD staff has been received specifying that an agreement between the owner/applicant and DWSD has been approved. Requirements to implement the agreement shall be specified in this notification. Final inspection and clearance of the Building Permit for each phase shall not be granted until all requirements have been adequately implemented to the satisfaction of the DWSD staff. Another written notification shall be submitted to Planning by DWSD when all improvements required at each construction phase are completed. All notifications from DWSD shall be permanently retained in the project file.*

- E.** *Mitigation Measure: Condition IV.C (Improvements to sewer facilities of the Davenport Water and Sanitation District)*

*Monitoring Program: The Building Permit for each construction phase shall not be issued by County Planning until all fees are paid as required by condition IV.C. DWSD shall notify County Planning in writing when the appropriate fees have been paid. This notification shall be permanently retained in the project file. These fees will be added to other monies secured by the DWSD to finance sewer replacements. DWSD will advise County Planning and the owner/applicant in writing when the sewer improvements are completed.*

- F.** *Mitigation Measure: Condition V.A (Transport of Excess Fill to Approved Fill Site)*

*Monitoring Program: The owner/applicant shall inform Big Creek Lumber at least 30 days prior to making an application for a Grading Permit to confirm that the excess fill material can be deposited at Big Creek's lumber yard. If Big Creek no longer wants the material, the owner/applicant shall find another appropriate fill site to propose to County Planning. The Grading Permit shall not be approved until written permission from the fill recipient is provided and the site has been approved by County Planning for inclusion into the Grading Permit. If the fill site is in the coastal zone, then its use for receiving fill must be authorized by a coastal development permit or by a valid County permit*

*that predates the California Coastal Act. The owner/applicant shall submit written verification from the fill material recipient (Big Creek Lumber or other approved fill site) to County Planning staff specifying the approximate volume of fill material received from the project during phase 1 construction. The hold on the Building Permit for phase 1 will not be released nor the Grading Permit finalized by County Planning until this letter is received. This documentation shall be permanently retained in the project file.*

- G. Mitigation Measure: Condition V.B. (Installation of Drainage Improvements)

*Monitoring Program: The hold on the Building Permit for phases 1 and 2 shall not be released by Planning staff until all drainage improvements have been installed according to the approved plans.*

- H. Mitigation Measure: Condition V.C (Minimization of Dust During Construction)

*Monitoring Program: County Planning staff, including the area Building Inspector, shall observe dust containment measures on the site during construction at all regular inspections. Any observed problems will be communicated immediately to the work crew and owner/applicant for rectification in 24 hours. A follow-up inspection will occur in 24 hours to verify the problem has been corrected.*

- I. Mitigation Measure: Condition V.D (Construction of Pedestrian Stairway and Prevention of Erosion on Slope)

*Monitoring Program: The owner/applicant shall submit engineered plans and a geotechnical report for a Building Permit application to construct the stairway described in condition V.D. The plans and geotechnical report shall be approved and the Building Permit issued before any other Building Permits are issued for this site. The construction of the stairway shall be completed and a final inspection letter from the geotechnical engineer submitted to County Planning before the hold on phase 1 construction is released.*

- J. Mitigation Measure: Condition V.E (Noise Insulation)

*Monitoring Program: The owner/applicant shall include information of the construction drawings for phases 1, 2 and 3 describing how highway noise reduction will be achieved for interior spaces. Building Permits for each phase shall not be issued until noise insulation measures have been approved by Building Plan Check staff. The area Building Inspector shall verify that noise insulation/reduction measures have been adequately*

*installed during regular construction inspections. The Building Permit will not be finalized without noise reduction measures being approved.*

- K. *Mitigation Measure: Condition V.F (Improvements to Avoid Traffic Conflicts)*

*Monitoring Program: The construction drawings for phase 2 shall include the improvements specified by condition V.F as well as a letter from Caltrans demonstrating that the agency has reviewed and approved the plans for these improvements. The Building Permit will not be issued until these requirements have been met. Planning staff will inspect the site to verify that the improvements have been installed as approved. The hold on the Building Permit for phase 2 will not be released until the improvements have been adequately installed. Photos documenting the improvements will be taken and permanently retained in the project file.*

- L. *Mitigation Measure: Condition VI.B (Maintenance of Landscaping)*

*Monitoring Program: Planning staff shall observe the condition of landscaping during each site inspection. Enforcement staff shall respond to citizen complaints regarding landscape maintenance. Any problems shall be immediately communicated to the owner/applicant with follow-up inspections to verify resolution of problems.*

~~*Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.*~~

## **VII. RECOMMENDED FINDINGS AND DECLARATIONS**

The Commission finds and declares as follows:

### **A. Background**

#### **1. Setting**

The proposed development is on the seaward side of Highway 1 in the unincorporated Town of Davenport, approximately ten miles north of the City of Santa Cruz. The site is located on the coastal terrace overlooking Davenport Beach and the Pacific Ocean. The subject 3.04 acre parcel is a long rectangle (approximately 140 ft. by 900 feet) with its eastern length contiguous to Highway 1 (see Exhibit 1). A Union Pacific railroad easement crosses the parcel at its western boundary extending the length of the parcel. The southerly third of the parcel, at elevations of 30-60 feet Mean Sea Level (MSL), is a portion of the upper slope of San Vicente Creek and is vegetated with riparian species. The center of the parcel, at elevations of 65-72 feet MSL, contains an existing 13,127 square foot building and associated parking (referred to as the "lower level" in this report). The northerly third of the parcel at elevations of 80-94 feet



currently is comprised of an open field on the southern half and an informal dirt parking area used by the general public on the northern half; (referred to as the “upper level” in this report).

Davenport is a small coastal town in Santa Cruz County's North Coast planning area. Other than an abandoned building owned by RMC Lonestar north of the project site, the existing building on the project site is the only development on the coastal side of Highway 1 in Davenport. The town's residential population of approximately 200 generally live in modest single-family dwellings. Aside from the cement plant industrial facility, there are approximately 20,000 square feet of commercial, warehousing and manufacturing uses on the inland side of the Highway. Restaurants, a grocery, and a bed and breakfast currently serve visitors traveling the scenic coastline. Davenport is overshadowed by the RMC Lonestar Cement Plant, a major industrial facility to the north of town.

The development surrounding the subject site on the oceanside of the Highway includes a vacant property northwest of the site owned by RMC Lonestar where many people park informally to view the ocean or access various trails that meander across the adjacent coastal bluffs. The land to the southeast of the riparian portion of the site rises to a marine terrace and is also vacant. Farther to the southeast this bluff top area is farmed in row crops. To the west beyond the railroad right-of-way are a vacant marine terrace, Davenport Beach, and the Pacific Ocean.

Access trails crisscross the coastal bluffs. An existing trail to the southeast of the applicants' building on the subject site is used by pedestrians to access the beach. A less direct route to the beach is achieved by traversing one of four eroded foot trails from the vacant northwest portion of the site down a steep slope to the railroad. These trails converge at a trail that parallels the railroad tracks which continues to the beach.

## ***2. Project Approved by County***

The proposed project is to remodel an existing 13,127 square foot commercial residential structure and to construct a 9,791 square foot addition on the structure. The additional 9,791 square feet of floor area is primarily achieved by converting the existing mezzanine to a full second story. The height of the building is increased by three to six feet to achieve the interior clearance for a second story floor space within a portion of the building. The structure was a former agricultural packing shed that was converted to a dwelling and several workshops in 1974 under County Use Permit 74-124-U. The County permit was amended in 1984 to allow a juice manufacturing and wholesaling business to locate on the site. A portion of the building is currently leased to the juice company for use as a regional distribution facility. The building also continues to provide residential use.

The County approval includes a Master Occupancy Program for a mixed use project of 22,918 square feet; a permit for excavation of 1,350 cubic yards of earth to construct a parking lot on the northern site to serve the proposed use; a rezoning of the property from the “C-1” (Neighborhood Commercial) Zone district to the “SU” (Special Use) zone district to allow mixed uses on the site; and a Variance to reduce the front yard setback to 0 feet for a 53 lineal foot

portion of the building. Also approved were a separate greenhouse, boat-shaped residence, shower building, and tool shed.

The County approval is for a specific, three-phase project that includes exact uses and interior partitions (see Exhibit 2). The following phases are approved under the County permit (as specified in Condition I.A):

Phase 1- Reconstruction of the northwest half of the existing building to include restaurant/café, retail shops and conference meeting rooms on the upper floor and micro-juicery and warehouse and three offices on the lower floor and the new 66 vehicle space parking lot [on the northerly third of the parcel].

Phase 2 -Reconstruction of the southeast half of the existing building to include one office and three visitor accommodation units on the upper floor (studio units) and one office, a day spa, two visitor accommodation units and one caretaker dwelling unit on the lower floor (two rooms with kitchens) and renovation of the existing parking [adjacent to the building] to provide for 13 vehicle spaces.

Phase 3 - Construction of a detached greenhouse of 750 square foot “boat house” [in the form of a] dwelling.

In addition, the County also approved Master Occupancy Program (Permit Condition VI.) that specifies more generally the range of uses allowed by the permit over time: (1) restaurant/café; (2) micro-juicery and warehouse associated with a restaurant or café; (3) offices not to exceed 50% of the floor area of the building; (4) conference and seminar facilities; (5) neighborhood scale retail sales; (6) two residential dwelling units; (7) day spa, sauna, hot tub uses; (8) Type A overnight visitor accommodations (which are hotels, inns, pensions, lodging houses, bed and breakfast inns, motels, and recreational housing units). Thus, the exact mix and location of uses listed in the three phases above and shown on the approved plans could change in the future. An administrative permit (but no coastal permit amendment) is required to allow changes that fit within these parameters of the Master Occupancy Program.

Finally, as approved by the County, the project includes dedication of two existing access trails, construction of an access stairway, provision of benches on the west side of the parking lot for public viewing use, and granting of a right of way for a possible future connection from the parking lot to the adjacent parking area.

### ***B. Analysis of Project Consistency with Local Coastal Program and Coastal Act***

As discussed above, the appellants' contentions cover a range of coastal zone issue categories. For purposes of analysis these have been grouped into the following categories: 1. Special Coastal Community and Visual Resources; 2. Land Use Types; 3. Parking, Circulation, and Public Access; 4. Public Services; 5. Nonpoint Source Pollution; 6. Archaeological Resources; and 7. Cumulative and Growth-Inducing Impacts. Since all the appeals are similar, the following discussion does not differentiate as to which party made

each contention. The following contentions are a mix of direct quotes and paraphrases, in order to summarize the full text of the appeals, which are found in Exhibit 5.

***1. Special Coastal Community and Visual Issues***

***a. Appellants' Contentions:***

The appellants raise a variety of claims about the impact of the approved building and parking lot on Davenport's community character and visual resources ((see Exhibit 5 for complete contentions). In particular, the appellants assert that the project will adversely impact the Davenport's character as an historic whale watching site and its "stunning ocean vistas of Monterey Bay." They also cite policies that require new development in Davenport to be consistent with height, bulk, scale, materials, and setbacks of existing development and that require that visible development be obscured or screened by landforms and vegetation. They claim:

The proposed project is inconsistent with other Davenport development in terms of height, bulk and physical scale. The project building will be 30 feet at its highest point, 6 feet higher than the Davenport Cash store, the highest building fronting Davenport. The proposed building at 22,918 sq. ft. will nearly double the size of the current packing shed, and Highway 1 visitor serving space will increase from 14,400 to 37,000.

In addition, the proposed 65 plus space parking lot will front nearly the entire length of Davenport and destroy the visual focus along Highway 1. The proposed parking lot would pave over the traditional whale-watching site historically used by tourists and residents alike. The proposed parking lot will block pedestrian and motorist visual access to the ocean and beaches and detract from motorists' viewing of whales.

The appellants also cite policies that call out Highway 1 as a scenic road that should be protected; and that require the protection of public vistas and aesthetic values. Additionally, the appellants assert that the impacts of the project on visual resources have not been adequately mitigated and that the project does not provide for the restoration of the Davenport Bluffs Scenic Area.

Furthermore, the appellants raise a concern about sensitive areas:

Under Public Resources Code 30116, 30502, sensitive coastal resource areas are those areas within the coastal zone of vital interest and sensitivity. Sensitive coastal resources areas include areas possessing significant recreation value, highly scenic areas, archaeological sites referenced in the California Coastline and Recreation Plan, and special communities which are significant visitor destinations. Davenport should be designated as a sensitive coastal resource area because it is a highly scenic area, it is a special community which is a significant visitor destination, and it is an archaeological site referenced in the California Coastline and Recreation Plan. If Davenport is so designated, a separate

report should have been made which contains a “specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access.” (PRC 30502) The LCP should include the implementing actions. The LCP should include the implementing actions. (PRC 30502; LCP 5.11.5, Designation of Resource Conservation Lands).

***b. Applicable Local Coastal Program Provisions:***

The following provisions of the *1994 General Plan and Local Coastal Program for the County of Santa Cruz* are especially applicable to these contentions:

**8.8.2 Coastal Special Community Designation:** Maintain a Coastal Special Community Designation for...Davenport...

**2.13.4 Expansion of Neighborhood Commercial Designation:** Only allow Neighborhood Commercial uses that are small scale, and appropriate to a Neighborhood or visitor service and will not have an adverse traffic, noise and aesthetic impacts on the adjacent residential areas...

**2.13.6 Compatibility with Adjacent Development:** Ensure compatibility between Neighborhood Commercial development and adjacent areas through Commercial Development Permit procedures to regulate siting, design, landscaping, signage, parking and circulation, drainage, and access. (See Chapter 8 Community Design).

**2.16.7 Design of Visitor Accommodations:** Ensure quality of design for visitor accommodations through Commercial Development Permit procedures, including the Zoning ordinance, to regulate density, signage, landscaping, buffering, on-site circulation and access, parking, and site and building design.

**5.10.10 Designation of Scenic Roads:** The following roads and highways are valued for their vistas. The public vistas from these roads shall be afforded the highest level of protection. State Highways: Route 1 – from San Mateo County to Monterey County...

**5.10.2 Development Within Visual Resource Areas.** Recognize that visual resources of Santa Cruz County possess diverse characteristics....Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section. Require discretionary review for all development within the visual resource area of Highway One, outside the Urban/Rural boundary, as designated on the GP/LCP Visual Resources Map and apply the design criteria of Section 13.20.130 of the County's zoning ordinance to such development.

**5.10.3 Protection of Public Vistas.** Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations,... inappropriate landscaping and structure design.

**5.10.6 Preserving Ocean Vistas.** Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

**5.10.9 Restoration of Scenic Areas.** Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for new development. The type and amount of restoration shall be commensurate with the size of the project for which the permit is issued. Provide technical assistance for restoration of blighted areas.

**Objective 5.11 Open Space Preservation:** To identify and preserve in open space uses those areas which are not suited to development due to the presence of natural resource values or physical development hazards.

**Objective 8.8, Villages, Towns and Special Communities:** To recognize certain established urban and rural villages as well as Coastal Special Communities for their unique characteristics and/or popularity as visitor destination points; to preserve and enhance these communities through design review ensuring the compatibility of new development with the existing character of these areas.

**8.8.4. Davenport Character:** Require new development to be consistent with the height bulk, scale, materials and setbacks of existing development: generally small scale, one or two story structures of wood construction.

**Program (p. 8-12):** Enhance Davenport as a visual focus along Highway 1. Prepare a landscaping and design plan, in accordance with the policies of this section, to achieve the following objectives: Clear, coordinated circulation including: Clear definition of stopping spaces (parking) along the highway frontage for both cars and bicycles; Clearly articulated pedestrian crossings; Adequate parking off Highway 1, nearby, for existing and new uses, and for visitors; Bicycle parking facilities to make the town a more attractive bicycle destination/stop over point. Landscaping to enhance commercial areas, and to assist in definition of parking spaces and walkways, and in screening of parking as appropriate. Emphasis on the area's whaling history and whale viewing opportunities. Elimination of visually intrusive overhead wires. Screening of the cement plant and its parking lot from the residential area to the north.

Additionally, for the Davenport Bluffs Priority Sites (058-0723-01,02,03) which are adjacent to the subject site **Figure 2-5 Coastal Priority Sites – North Coast** has Special Development Standards: to depress and landscape parking areas to limit visibility from Highway 1 and to

maintain unobstructed coastal views; to use low growing vegetation that will not obstruct views; to eliminate roadside parking along the property frontage; and to provide interior pedestrian circulation to separate pedestrians from Highway 1.

Implementing provisions are found in the *County Code*. *County Code* Section 13.20.143 contains “Davenport Special Community Design Criteria,” including:

**(c) Highway 1 Frontage:** Development along Davenport’s Highway 1 frontage shall conform to the following objectives;

1. Davenport shall be emphasized as a rural community center and as a visitor serving area including:

(i) Site design shall emphasize the historic assets of the town, its whaling history and whale viewing opportunities;...

(iii) Landscaping shall tie together and accent the commercial uses, and assist in the definition of walkways and parking areas, and/or screens parking.

2. Clear, coordinated circulation shall be developed including:...

(iii) adequate parking off Highway 1, for existing and new uses, and for visitors...

*County Code* Section 13.20.130d specifies:

**Beach Viewsheds:** The following Design Criteria shall apply to all projects located on bluffs and visible from beaches.

1. **Blufftop Development.** Blufftop development and landscaping...in rural areas shall be set back from the bluff edge a sufficient distance to be out of sight from the shoreline, or if infeasible, not visually intrusive.

*County Code* Section 13.101.383 contains “Development Standards for the Special Use “SU” District” and states in part:

...For structures other than single-family dwellings and accessory structures, the building height limits, required site area, required yards, and other regulations for any use shall be in keeping with the requirements, restrictions or regulations provided in this Chapter (13.10) for the most restrictive district within which the use is allowed.

The following are the proposed project’s non-residential uses, the most restrictive zoning district in which they are allowed, and the associated “maximum average height:”

Restaurant/café	PR	28’
Micro-juicery (manufacturing) & warehouse	M-1,PA,VA,CT,C-1,C-2	35’

Offices	VA,CT,C-1,C-2,C-4	35'
Conference and seminar facilities	PR, R-A, R-R, R-1, R-M	28'
Retail sales, neighborhood-scale	PR (not full range of uses)	28'
	VA,CT,C-1,C-2,C-4	35'
Day spa, sauna, hot tub	PR	28'
Type A overnight visitor accommodations	PR	28'

Similarly, Section 13.10.384, also pertaining to the “SU” district, states that ,“The design criteria for all other [than residential] uses shall be as provided in this Chapter for the most restrictive district within which the use is allowed.”

Chapter 13.11 contains general “Site, Architectural and Landscaping Design Review.” Of special relevance is the first part of Section 13.11.074(b):

It shall be an objective to reduce the visual impact and scale of interior driveways, parking and paving

**(1) Parking Lot Design**

(i) The site design shall minimize the visual impact of pavement and parked vehicles. Parking design shall be an integral element of the site design. Siting building toward the front or middle portion of the lot and parking areas to the rear or side of the lot is encouraged...

(ii) parking areas shall be screened from public streets using landscaping, berms, fences, walls, buildings, and other means...

(iii) Variation in pavement width, the use of texture and color variation in paving materials, such as stamped concrete, stone, brick, pavers, exposed aggregate, or colored concrete is encouraged in parking lots to promote pedestrian safety and to minimize the visual impact of large expanses of pavement.

***c. County’s Action/Response***

The County approval was for a two-story 22,918 square foot building with two parking lots totaling approximately 37,000 square feet. Development permit Finding 5 states:

The proposed commercial mixed use/residential project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood in that visitor-serving commercial uses will continue to be provided on the Highway 1 frontage of Davenport as encouraged by the General Plan and County Code. The design of the project continues to limit structural development on that portion of the parcel where the existing building is located. This design preserves coastal and marine views as well as avoids other visual impacts

that could be created by a project with more structural development on the site...

In a December 18, 1998 letter, the County responded to the appellants' contentions (see Exhibit 6 for complete letter):

The appellants imply the project is much larger than in reality. Their statement that the 22,918 square foot building will nearly double the size of the existing building is factually correct but misleading. The floor measurement of the existing 9,791-sq. ft. building does not include the existing mezzanine space. By increasing the height by 3-6 feet, the mezzanine can be converted to a complete second story and the floor measurements will then be applied to both stories... The footprint will only be expanded by 737 square feet. Similarly, their statement that the project parking lot "will front nearly the entire length of Davenport" is not true. The segment of Highway 1 traversing the core of Davenport is three times the length of the 375-foot long project lot. However, the size of the parking area would be a substantial change for the town and motorists traveling on scenic Highway 1.

With regard to the increased height, the County staff report of March 25, 1998 notes,

The site standards for the "SU" zone district use the site standards of the zoning most closely corresponding to the site's General Plan designation. In this case, the site standards of the "C-1" zone district would be used even with a rezoning to "SU". The maximum height of structures is 35 feet.

The County letter further notes that the visual analysis shows that the project building has been designed to result in minimal change to the visual environment. It references condition IV.A. 12 which requires earthen tone exterior building colors or corrugated metal siding replicating an agricultural building. Also, regarding the parking lot, permit condition IV.A.7 requires a colorized stamped concrete surface and IV.A.10 limits lighting of parking and circulation areas to pedestrian oriented lighting not to exceed 3 feet in height. In addition the parking lot has been recessed three feet below grade to minimize visual impacts. The County letter observes that currently the public park their vehicles and stand on the northwest vacant portion of the parcel to watch for whales and enjoy the coastal views. This portion of the site will be developed with formal parking. A band of a minimum of 25-foot width along the (southern) oceanward side of the lot will be maintained as open space with three viewing benches for the public. Hence, the County letter maintains that whale watching opportunities will be continued.

With regard to grading, the County letter notes that the natural landform proposed for alteration is a relatively level coastal terrace without significant topographic features. The approximate 1,350 cubic yards of grading is for the purpose of recessing the parking lot to minimize disruption of coastal views and to allow for gravity controlled drainage. The County letter



maintains that the grading will not alter the basic topographic form of the bluff. Therefore, it is clear that any landform alteration is not significant.

Finally, the County letter notes that development of adjacent parcels is limited by their General Plan/LCP and Zoning designations of Parks and Open Space and Agriculture. Thus, visual impacts will be limited to the uses allowed.

***d. Substantial Issue Determination:***

The project approved by the County raises a substantial issue with respect to the community character and visual resource protection policies of the certified local coastal program. First, the County's Land Use Plan policies taken together require in effect that the impacts of new development in view of Highway 1 be minimized, and that new development in Davenport conform to existing community character. More specifically, Policy 2.13.4 requires that new neighborhood commercial development be small scale. Other policies require that new development be designed and integrated into the existing community character and aesthetic. In addition, with respect to rural beaches, Section 13.20.130d of the zoning ordinance requires that blufftop development be located out of sight from the shoreline.

What is "small-scale"? And what is this village's "community character"? Currently, the immense Lone Star Industries cement plant dominates Davenport. The character of the adjacent, tightly clustered residential and commercial development reflects its working heritage: whaling industry, agricultural shipping and processing, cement manufacture. In its layout and simplicity of architecture-- devoid of pretense--it is strongly reminiscent of other "company" mining or logging towns in the West. Today, the quarrying and processing of limestone for the manufacture of cement remain the economic backbone of the community. Some diversification is offered by small-scale artisan industries (e.g., glassblowing). And, the two-block commercial strip along the highway frontage continues the process of awakening to the opportunities afforded by the tourist industry.

Ignoring the overbearing presence of the cement plant, this commercial frontage could be described as "eclectic frontier rustic" in character. There is a variety of building styles, mostly two stories or equivalent height, none looking architect-designed. Within the County's defined Davenport urban enclave, the project site contains the only significant existing building on the seaward side of the highway.

When evaluating the character of an individual building as it relates to other buildings in a community, a number of factors need to be considered, including the building's proportions, layout, exterior finish and any architectural embellishments. Equally important are height, bulk, and other considerations of scale.

In this case, the existing building--which until recently housed the Odwalla juice works--is a long, low-profile wooden structure built as a railroad shipping shed and formerly in use as an agricultural packing and processing plant. It is visible in public views from the highway as well as the beach below. The exterior of the building reflects its industrial purpose. It presents a totally functional, straightforward, unadorned appearance. As such, it is entirely consistent with—and contributes to—the previously-described community character.

In terms of scale, the building's "footprint" (13,127 sq. ft.) combined with its height (24 feet above grade) make it the largest existing building (outside the Lone Star cement plant) along Davenport's Highway 1 frontage. Therefore, in both architectural style and in scale, this building plays an important role in defining Davenport's special character. In particular, as the biggest building of its kind, it establishes the appropriate limits of scale in this small-scale community.

**Building Enlargement Raises Substantial Issue:** The approved project raises a substantial issue because it would enlarge the existing building and intensify development on the relatively undeveloped coastal bluffs of Davenport. The proposed development would rehabilitate and modify the existing structure to accommodate (mostly) new uses--some of which would be visitor-serving uses. The rebuilt structure will occupy for the most part the existing building footprint and will be limited to two stories in height--consistent with the prevailing two-story equivalence of the Davenport commercial frontage. It will be sheathed in wood siding or corrugated metal, and as approved by the County would maintain the overall exterior architectural character of the former agricultural packing shed. Such adaptive reuse of older buildings--especially those that contribute to community character in this way--is generally encouraged and welcomed.

However, in order to accommodate the new uses, certain exterior architectural modifications are proposed. The County-approved plans show that these modifications include increasing the roof height at the north end of the structure by three to six feet, resulting in a somewhat bulkier appearance and an increased "skyprint" (i.e., profile against the sky). Also, the footprint of the existing structure would be increased by 234 sq. ft.

Thus the effort to accommodate the new and increased level of uses results in a somewhat larger building profile, which in turn increases the amount of development between Highway 1 and the scenic shoreline of the Santa Cruz County coast. Additionally, the higher profile would result in a slight increase in the amount of development visible from the beach.

Two fundamental strategies for protecting the coast's scenic resources, as reflected in the LCP policies cited above, are to 1) minimize the amount of new development seaward of Highway 1, and 2) insure that new development is appropriately scaled to fit into existing small-scale coastal communities. A substantial issue is raised because the rebuilt, somewhat enlarged structure represents increased development between the highway and the sea, and because it would "raise the threshold" with respect to what should be the maximum scale for new visitor-oriented commercial buildings in the small-scale community of Davenport. And, to the extent that the increased profile of the building would result in [additional] development visible from a rural beach, the project is inconsistent with the LCP's Beach Viewshed protection ordinance (County Code Section 13.20.130d) as well.

Furthermore, there is a technical issue with regard to height limit. The County staff report says that the zoning which most closely corresponds to the General Plan designation applies. However, the cited *Code* section actually requires use of the most restrictive zoning district. The *Code* section is not explicit in addressing which most restrictive district to use in the case of multiple uses with varying most restrictive districts. It can be read as directing that the most restrictive of the zoning districts for any of the uses applies. In this case, the predominant uses

are permitted in the PR district, which has the most restrictive height limit of 28 feet. (The lower portion of the property where the riparian corridor is and adjacent properties to the south and east are also designated “PR.”) The building is currently at 24 feet. The County approved a 30 foot height without a variance, based on using the standards of the “C-1” district, which are not the most restrictive for the uses in question. Therefore, a substantial issue is raised with regard to allowed height in the County’s local coastal program.

**Commercial Parking Lot Development Raises Substantial Issue:** In addition to the issues of building design and scale *per se*, substantial issue arises due to the kinds and intensities of the proposed uses and attendant parking requirements. Specifically, the project needs to meet County parking standards. Therefore, in order to accommodate the proposed new types of use, the County’s approval provided for expanded parking facilities. These facilities include approximately 13 spaces on the already-paved lower level, and a larger (66-space) parking lot on the upper level.

The first consideration is that the County-required upper-level parking facility will significantly impact Davenport’s community character. At present, the upper level is an unpaved, undeveloped fragment of coastal terrace, on part of which the owner allows informal public parking. The project as approved by the County would result in this vacant area being converted to a formal, paved, landscaped parking lot paralleling the seaward side of Highway 1. This is in contrast to the extremely informal rural look of parking that exists in the rest of the town.

While mitigations (recessing, landscaping, lighting limitations, and stamped concrete) are required, they are not sufficient to conceal the assembled mass of motor vehicles and will inevitably alter the dusty informality of the existing parking lot. Such upscale improvements are driven by the need to accommodate the increased intensity of use, but will also tend to change the existing community character. This alteration of community character will result both from substituting a prettified “improved” landscape for one which is rough, dirty, and therefore “rustic”—and from increasing the collected presence of parked motor vehicles in public view. In other words, the County’s parking standards for the proposed kinds and intensities of uses dictate that the entire usable Highway 1 frontage of the parcel be converted to a formal parking lot. Because the project does not minimize this paving and the associated visual and community character impact, a substantial issue is raised by this contention with respect to the cited policies.

Second, the local coastal program dictates that public view protection is paramount at this site. Again, there are elements of the project, especially lowering of the upper parking lot and the proposed and required landscape screening, that attempt to satisfy this policy directive. However, the project does not adequately conform with the policy 5.10.6 requirement to retain public ocean views to the maximum extent possible.

Specifically, the proposed parking lot, when occupied by vehicles, will detract from the overall seaward view enjoyed by southbound travelers and will partially block significant ocean views as seen from Highway 1 as it passes through Davenport. This southbound public view includes distant cliff faces to the south, glimpses of whitewater where the surf crashes against

the shoreline, and a broad expanse of bluewater representing the outer reaches of Monterey Bay.

While the finished grade of the lot will be partially recessed below the existing dirt surface and entirely below the adjacent profile of the highway, the parked cars will still be in plain sight. Reflective glare from the sun shining on the vehicles will especially detract from the visitor experience. In addition, the amassed vehicles in the parking lot, when full, will directly impede the whitewater component of this vista. Thus, the public viewshed will be impaired both by the “visual clutter” effect of the parked automobiles, and by direct blockage of the line of sight to the shoreline.

In summary, the proposed project looked at as a whole does not fit within the parameters of Davenport’s existing community character; and, public ocean views will not be retained “to the maximum extent possible.” Therefore, the project as approved by the County does not conform with Local Coastal Program policy 5.10.6. Accordingly, a substantial issue is raised.

With regard to the contention about sensitive resource areas, the Coastal Act is not the standard of review for this appeal. Neither the Coastal Commission nor the County have so designated the site. Therefore, there is no substantial issue as far as sensitive resource areas are concerned.

***e. De Novo Coastal Permit Conditions***

In order to approve a coastal permit for the project, all of the cited local coastal program policies have to be satisfied. With regard to the main building, the primary way to accomplish this objective is to not enlarge its size. It is already large by Davenport standards and intrudes somewhat into the beach and Highway viewshed. Therefore, any changes to the main building should be of a rustic appearance with earthen tone colors that blend with the surrounding landscape or corrugated metal siding replicating an agricultural building. This can be accomplished by retaining County Conditions IV.A.1 and IV.A.12.a. Additionally, other specific design measures that the County required are necessary. Night lighting shall be minimized, signing shall be controlled, and landscaping shall shield the structure and parking area, while being maintained so that it does not become overgrown and further block shoreline views. Also, new utility services shall be undergrounded, and rooftop equipment and trash receptacles should be screened. These measures can be accomplished by retaining County conditions IV.A.10, IV.A.6, IV.A.12.b, VI.B, V.G, IV.A3, and IV.A.4 respectively.

With regards to signing, the substantial issue findings indicate that the standards of the “PR” district, not the “C-1” district govern. The former limit signs to 12 sq. ft., rather the 50 sq. ft. of the C-1 district, as indicated in condition I.V.A.6. Therefore, a variance is needed to allow up to 50 sq. ft. of signage. That amount of signage is appropriate for several reasons. There are two building entrances, so a sign for each can average 25 sq. ft. That size sign is reasonable since the allowed uses are visitor-oriented commercial, not just public recreational; there are potentially multiple uses; the site was previously zoned C-1; and the building itself is largely hidden. Thus, the variance will be in harmony with the general intent and purpose of zoning objectives and will not be materially detrimental to public health, safety, or welfare or injurious to property or improvements in the vicinity. The variance is also appropriate because there are special circumstances applicable to the property and because it does not constitute a grant of

special privileges for the same reasons as indicated in the County setback variance findings (see Exhibit 2), which are incorporated by reference in this approval (with the substitution of the "PR" standards for the "C-1 standards, and the greater sign area for the setback).

With respect to the upper portion of the site where the parking lot is proposed, there are two visual imperatives. One is the necessity to protect the view corridor to the rocky shoreline from where it is visible from Highway One. The second is the general necessity to protect the blufftop's open space character. Together, these suggest a reduction in the visibility that the parking lot will have (including the parked vehicles) as well as its overall size.

These objectives can be met (1) by allowing for a reduced parking area to approximately the size it is currently (as delineated by boulders and logs), (2) by relocating it to the least visible portion of the site, and (3) by further lowering it below the vantage point of Highway 1,. The County approval required the final level of the parking lot to be about three feet below the elevation at the edge of Highway One. And, in discussions with Commission staff, the applicants indicated that they could grade another 18 inches. This information, together with a review of submitted topographical information showing the highway profile, demonstrates that the parking area can be further recessed below the surface of the bluff. Excavation to an elevation approximately five feet below the existing profile of the seaward edge of the highway appears feasible.

The County also required screening vegetation to be no more than 2 ½ feet tall. However, if the surface of the parking area is dropped to an elevation 5 feet below the highway, some taller shrubbery may be appropriate without blocking views. While not all vehicles (especially large ones) can be totally concealed, the combination of recessing the reduced parking area by up to five feet combined with screening vegetation should result in the parked vehicles being mostly hidden from the Highway. However, given that some of the parking area will unavoidably be visible through the entry ramp and the parking lot and vehicles will still be visible to pedestrians, keeping the County condition for colorized concrete is necessary to partially mitigate its visual impacts. Also, if a retaining wall is needed for the parking lot, then it too should be designed, colorized, and landscaped to be unobtrusive.

Reducing the size of the parking lot allows a larger portion of this upper meadow to retain its open space character. Also, by remaining free of structural development, the important view corridor to the shoreline can be preserved. In order to ensure that objectives for maximum vista retention (5.10.6) and open space preservation (5.11) are implemented, placing most of the meadow encompassing the view corridor under protective easement is appropriate (see Exhibit 4). This would also serve to implement the geotechnical recommendations for a 25-foot bluff setback (see Finding #8). Access improvements, such as the proposed benches, trails, and stairs, that do not interfere with and do allow people to enjoy the vistas can be allowed in the easement area. The remaining meadow area at the northwest corner should be landscaped in a manner that prevents vehicular use and promotes site restoration pursuant to policy 5.10.9. This area, not necessary to be within a permanent easement, may be re-examined as part of a community-wide planning process as to possible additional improvements that would carry out policies related to Davenport's community character and public access opportunities (see Finding #7).

As so conditioned, the proposed project is consistent with the cited visual resource and special community policies of the *1994 General Plan and Local Coastal Program for the County of Santa Cruz* and the Local Coastal Program development standards contained in the *County Code*.

## **2. Types of Land Use**

### ***a. Appellants' Contentions Regarding Zoning Change From Neighborhood Commercial To Special Use and Priority Use***

Appellants raise both procedural and substantive claims concerning appropriate land use at the site (see Exhibit 5 for complete contentions). First, they claim the County inappropriately rezoned the property from "C-1" (Neighborhood Commercial) to "SU" (Special Use). In particular, appellants assert that the County rezoned the property to allow uses, such as visitor serving, that would not otherwise be allowed in the C-1 zoning.

The appellants are also contending that the County's rezoning sets a "terrible precedent contrary to logical and orderly planning and development." The appellants challenge the particular use approved by the County, "This is not a small-scale project, but a mini resort and shopping mall. Visitor accommodations will displace opportunity for legitimate Neighborhood Commercial uses to serve the community of Davenport."

Furthermore, the appellants' contend that the conversion around 1983 to the building's present use as a juice manufacturing facility has "apparently never been approved by the County." This building was originally a Brussels sprout packing shed. The appellants assert that to rezone the present project to a "SU" (Special Use) mixed-use commercial zone district from its currently approved land use as an agriculture related structure does not conform with the Local Coastal Program that requires the maintenance of a hierarchy of land use priorities with agriculture being the highest priority.

### ***b. Applicable Local Coastal Program Land Use Plan Policy Provisions:***

The governing *1994 General Plan and Local Coastal Program for the County of Santa Cruz* land use plan map designates the site as "Neighborhood Commercial" within the "Rural Services Line." In addition to the Special Community provisions cited above, the following provisions are applicable to this issue:

**Objective 2.13, Neighborhood Commercial Designation** To provide compact, conveniently-located, and well-designed shopping and service uses to meet the needs of individual urban neighborhoods, rural communities and visitors.

**2.13.2 Location of Visitor Serving Neighborhood Commercial Uses:** Designate on the General Plan and LCP Land Use Maps Neighborhood Commercial areas specifically suitable for visitor serving commercial uses,

based on: proximity to public beaches, the yacht harbor, state parks, or other tourist or recreational attractions.

**2.13.3 Allowed Uses in the Neighborhood Commercial Designation:**

Allow a variety of retail and service facilities, including neighborhood or visitor oriented retail sales, recreational equipment sales, personal services, limited offices, restaurants, community facilities including child care facilities, schools and studios, rental services, and similar types of retail and service activities.

**2.13.4 Expansion of Neighborhood Commercial Designation.** Allow only uses that are small scale and appropriate to a neighborhood or visitor service area, and will not have an adverse traffic, noise and aesthetic impacts on the adjacent residential areas. Allow the expansion of Neighborhood Commercial land use designations only where: A need and market exists, and the use will not adversely affect adjacent residential neighborhoods.

**2.13.5 Visitor Services within Coastal Special Communities.**

Encourage the provisions of visitor serving commercial services within Coastal Special Communities as follows: (a) Davenport: Highway 1 frontage...

**2.16.1 Location of Visitor Accommodation Designations:** Designate on the General Plan LCP Land Use Maps those areas existing as or suitable for Visitor Accommodations. Require all visitor serving facilities to be located where adequate access and public services and facilities are available, to be designed and operated to be compatible with adjacent land uses, including residential uses, to utilize and complement the scenic and natural setting of the area, and to provide proper management and protection of the environment.

**2.16.4 Allowed Visitor Accommodations in Urban Residential Areas:**

Allow small scale Visitor Accommodations such as inns or bed and breakfast accommodations in urban residential areas and within the Rural Services Line where the use would be compatible with neighborhood character, surrounding densities, and adjacent land uses.

**2.22.1 Priority of Uses Within the Coastal Zone:** Maintain a hierarchy of land use priorities within the Coastal Zone: First Priority: Agriculture and coastal-dependent industry; Second Priority: Recreation; visitor serving commercial uses; and coastal recreation facilities; Third Priority: Private residential, general industrial, and general commercial uses.

**2.22.2 Maintaining Priority Uses.** Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.

**8.8.3 Tourist Commercial Concessions:** Encourage the provision of tourist commercial services with Coastal Special Communities, as follows:  
(a) Davenport: Highway 1 frontage...

***c. Applicable Local Coastal Program Implementing Regulations:***

County Code Section 13.10.331(e) provides:

**Specific “C-1” Neighborhood Commercial District Purposes.** To provide compact and conveniently located shopping and service uses to meet the limited needs within walking distance of individual urban neighborhoods or centrally located to serve rural communities. Neighborhood Commercial uses and facilities are intended to be of a small scale, with a demonstrated local need or market, appropriate to a neighborhood service area, and to have minimal adverse traffic, noise, or aesthetic impacts on the adjacent residential areas.

Uses allowed include gas stations, banks, meeting halls and conference rooms, barber and beauty shops, community facilities, offices, fitness centers and spas, retail shops, schools, and the like (Code Section 13.10.332).

The Code also contains the following rezoning standards:

**Consistent Zone Districts.** ...Rezoning of property to a zone district which is shown in the following Zone Implementation Table as implementing the designation applicable to the property, shall not constitute an amendment of the Local Coastal Program. (Code Section 13.10.170(d))

Land Use Designation	Implementing District	Zone	Principal Permitted Uses
C-N Commercial	Neighborhood Commercial	C-1 Commercial	Neighborhood – serving small scale commercial services and retail uses
		CT Tourist Commercial	Visitor Serving uses and facilities
		PA Professional administrative offices	Professional and Administrative Offices.
All Land Use Designations	PF Public Facilities		Various public uses
	SU Special Use		No principal permitted uses in SU

**Zoning Plan Amendment** ...The Planning Commission shall recommend approval of a rezoning only if it determines that:



1. The proposed zone district will allow a density of development and types of uses which are consistent with ...the adopted General Plan;
2. The proposed district is appropriate to the level of utilities and community services available to the land; and
3. One or more of the following findings can be made:
  - i) the character of development in the area where the land is located has changed or is changing to such a degree that the public interest will be better served by a different zone district;
  - ii) the proposed rezoning is necessary to provide for a community related use which was not anticipated when the zoning plan was adopted; or,
  - iii) the present zoning is the result of an error; or,
  - iv) the present zoning is inconsistent with the designation shown on the General Plan. (Section 13.10.215)

Section 13.10.170 further provides:

- zoning and regulations shall be in harmony with and compatible with the Local Coastal Program Land Use Plan and implement its objectives, policies, and programs; and
- zoning and regulations shall not be amended out of conformance with the General Plan.

The following *Code* sections, in part, govern the SU Special Use district:

**Purposes of the Special Use “SU” District ...**

(a) **General.** To provide for and regulate the use of land for which flexibility of use and regulation are necessary to ensure consistency with the General Plan, and to encourage the planning of large parcels to achieve integrated design of major developments, good land use planning, and protection of open space, resource, and environmental values...

(c) **Mixed Uses.** To provide for the development of lands which are designated on the General Plan for mixed uses, and where the specific portions of the land reserved for each use have not yet been specified or determined in detail. (*Code* Section 13.10.381)

**Uses in the Special Use “SU” District**

**(a) Allowed Uses...**

1. All uses allowed in the RA and R-1 Zone District shall be allowed in the Special Use "SU" Zone District. Where consistent with the General Plan...
2. All uses allowed in Zone Districts other than RA and R-1 shall be allowed in the Special Use "SU" Zone District where consistent with the General Plan and when authorized at the highest Approval Level...

**(b) Principal Permitted Uses.** The allowed uses in the Special Use "SU" District are not principal permitted uses...for purposes of Coastal Zone appeals pursuant to Chapter 13.20, Coastal Zone Regulations, of the County Code. Actions to approve any uses in "SU["]Zone District in the Coastal Zone are appealable to the Coastal Commission...(Code Section 13.10.382)

***d. County's Action/Response:***

The County approved a specific, phased, mixed use project as well as a slightly broader range and mix of uses which could occur in the building upon issuance of a "change of occupancy permit," as described in Finding 1(b) above. Concurrent with the County action to approve the subject coastal permit, the County approved a rezoning of the subject site to "SU Special Use."

The Santa Cruz County Staff Report to the Board of Supervisors for the October 20, 1998 hearing discusses the rezoning to "SU" and resulting land uses to be approved:

The project property is designated as "Neighborhood Commercial" by the General Plan/Local Coastal Program. General Plan policies 2.1.3.5 and 8.8.2 encourage visitor serving commercial services within coastal special communities, such as the Highway 1 frontage of Davenport. General Plan/LCP objective 2.12 (Mixed Use Development) "allows a mixture of different types of commercial, residential and public facilities in appropriate locations where the combination of uses are complimentary and contribute to established centers of community activity and commerce." In the Planning Commission's judgment, the project meets these General Plan/LCP policies.

The property is zoned "C-1" Neighborhood Commercial, which is one of the three zonings that implement the General Plan designation of "Neighborhood Commercial". C-1 zoning allows all the uses proposed by the project except the visitor accommodation units. Such visitor units are allowed in the "CT" (Commercial Tourist) zone district, one of the other zonings that is consistent with the parcel's General Plan designation. However, "CT" zoning does not allow micro-juicerries and most offices. The third zoning which is consistent with the General Plan designation, "PA" (Professional-Administrative), does not allow many of the proposed uses. The existing zoning is not consistent with most proposed uses of the site

that would be oriented to meet the visitor-serving aspects of policies 2.13.5 and 8.8.2.

A rezoning to the "SU" (Special Use) zone district is necessary to allow the proposed uses on the property and to provide better overall consistency with the General Plan designation. The "SU" zoning can be used with any General Plan designation and can allow all uses permitted by the several zone districts that implement the designation. One of the purposes of the "SU" zone is to provide land use regulation "for which flexibility of use and regulation are necessary to ensure consistency with the General Plan. Another purpose is "to provide for the development of lands which are designated by the General Plan for mixed uses". A rezoning to "SU" zone will allow a variety of visitor serving uses that are encouraged by the General Plan for this location while allowing for other small scale commercial uses. The range of uses can be restricted to those which are compatible with each other and the site by a Master Occupancy Program. Uses that would be prohibited, such as automobile service station and recycling centers, have been so specified in the Master Occupancy Program that is included in the recommended permit conditions (Condition VI.A). "SU" zoning in combination with a Master Occupancy Program operated much the same way as Planned Unit Developments do in other jurisdictions where carefully planned mixed uses are desired on the same site.

Since the "SU" zoning does not have its own site standards (setbacks, etc.), the site standards of the zoning that most closely corresponds to proposed land uses are used. In this case, the "C-1" zoning site standards would be applied to the site. The project can meet all standards of the "C-1" zone district with the exception of an encroachment into a portion of the frontyard setback... The residential/visitor unit density analysis that was conducted for this site concludes that the 5 visitor units and 2 dwellings are well within the density limits prescribed by applicable provisions of the County Code. These 7 units requires a minimum site area of 19,000 square feet of developable land and, ... the site contains 1.45 acres of developable area.

In a December 18, 1998 letter, the County responded to the appellants' contentions (see Exhibit 6 for complete letter):

Much of the appeal is based on the appellants' beliefs that the rezoning to "SU" (Special Use) is subject to certification by the Coastal Commission, and secondly that the General Plan/Local Coastal Program (LCP) designation of the property of "Neighborhood Commercial" does not allow the visitor accommodation uses approved by this project. These two beliefs are inaccurate. First, County of Santa Cruz Code Section 13.10.170 specifies the "SU" zone district as being consistent with all General Plan/LCP land use designations, and as such, a rezoning to the "SU" shall not constitute an amendment of the Local Coastal Program. This code

section is one of the LCP implementing ordinances that has been certified by the Coastal Commission....

Overnight visitor accommodations, a priority use in the Coastal Zone, is appropriate for this site due to its near coast location, spectacular coastal views and access via Highway 1. Early in the permit process, Planning staff considered a rezoning from "C-1" to "CT". But this zoning while allowing overnight accommodations, would restrict the site for many "C-1" uses that are not permitted in "CT" zoning, such as a bank, an ATM machine or a barber shop, all of which could benefit local residents and visitors alike.

...the County recognized that the project was an infill project on a parcel of record and that the project was compatible with the pattern of existing development as specified by policy 5.10.7. The project continues commercial uses on the Highway 1 frontage of Davenport...

With the site rezoned to SU, the County coastal zone permit findings include:

- that the project is a use allowed in one of the basic zone districts, other than the special use (SU) district, listed in section 13.10.170(d) as consistent with the general plan and local coastal program LUP designation.
- The mixed uses of visitor accommodations, restaurant, micro-juicery, offices (of less than 50% the total floor space of the project building) and ancillary residential units are allowed in the implementing zone districts of the parcel's General Plan designation of "Neighborhood Commercial".

With regard to the building conversion, the County responded as follows in its December 18, 1998 letter:

The building has not been used for agricultural related uses for at least 24 years and past code violations have been resolved. The existing building was originally constructed and used as an agricultural packing shed when the property was zoned for agricultural uses prior to 1974. The 2.9 acre parcel has limited use for agriculture by itself due to the majority of the site being covered by either the existing building or riparian habitat. On May 21, 1974 the Board of Supervisors rezoned the parcel to "UBS-1" (Unclassified Building Site with 1 acre minimum parcel size. This zoning has been replaced with "SU"). At the same time the Board approved Use Permit 74-124-U to convert the packing shed to artisans' workshops and studios and a caretaker's dwelling unit. This use continued until the building was converted to a juice bottling plant in 1983 without the benefit of building or planning permits. The County posted a Violation Notice during the time the non-permitted conversion was occurring. By this time, the County's LCP was certified by the Coastal Commission and Coastal Zone Permit authority was transferred from the Commission to the County (January 13, 1983). The new County LCP land use maps designated the property as "Mt. Residential" and "Priority Site

2” which was identified by former LCP policy 7.2.2 as a warehouse with a tourist service/coastal commercial priority use designation for future uses. The property was zoned “CC” (Coastal Commercial). The property owner responded to the Violation Notice by applying for the appropriate permits. Coastal Zone/Development Permit 84-0230 was approved on May 8, 1984 to allow a juice manufacturing business in conjunction with the previous permitted uses on the property. Building permits for the stopped conversion were obtained shortly thereafter. One of the conditions of Permit 84-0230 was that “any future use shall meet the LCP definition of tourist serving”.

On October 19, 1995 the current permit holders applied for permits for the current project. The 1994 General Plan/LCP (certified by the Commission on 12/15/94) changed the land use designation of the site to “Neighborhood Commercial” and rezoned the property “C-1”. The mixed commercial project, which includes overnight visitor accommodations and small restaurant, is consistent with the 1984 permit requirement for future uses.

***e. Substantial Issue Determination:***

**Rezoning to SU:** The appellants raise the issue of the procedural legality of amending a zoning designation without direct review by the Coastal Commission. As the cited policies above show, the Santa Cruz County Local Coastal Program allows for a change in zoning to SU Special Use without Commission review. This is because the Coastal Commission has already certified that the SU district (in addition to the Neighborhood Commercial, Tourist Commercial, and Office districts) is an implementing zone for the Neighborhood Commercial designations of the land use plan. In retrospect, the Commission finds this provision overly permissive, but the proper forum to address it is through the periodic review process and a local coastal program amendment. The Commission would concur that the uses allowed under the SU zone are potentially too broad. However, there is a safeguard, in that there are no “principal permitted uses” in the SU zone (13.10.382). This means that any approved development in the SU district is appealable to the Coastal Commission.

Furthermore, the SU district appears to be a good choice since it allows a range and mix of uses that other zoning districts do not allow, including visitor accommodations. Under the LCP, a visitor serving use has a high priority for such a shoreline location.

**Appropriate Uses:** The next issue to examine in this case is the appropriateness of the uses permitted. Because of the nature and structure of the SU zone, one must rely on the land use plan to determine appropriate uses. All of the relevant land use plan policies have to be read together. It is true that there is a separate Visitor Accommodation designation, which could leave the impression that visitor uses are not appropriate on this Neighborhood Commercial-designated site. But the many other cited policies (e.g., 2.13.3, 2.13.5; 8.8.3) clearly contemplate visitor uses for such an area. Also, given that the local coastal program is based on the Coastal Act and its support for visitor uses, and given the historic designations on the site, the approved inclusion of a visitor component is appropriate. About half can be considered visitor serving including the restaurant, five overnight accommodations, spa, and

possibly the meeting rooms and shops. Although the spa is for the use of the overnight guests and not the general public, it would still be considered visitor-serving.

Of the remaining uses, the three offices fall within the list of appropriate neighborhood uses, although there is nothing in the approval to limit them to neighborhood-oriented or visitor-serving purposes. Residential uses are not listed as a Neighborhood Commercial use in the land use plan, but residences are allowed in most zoning districts. The warehouse and manufacturing do not appear as appropriate neighborhood commercial uses. However, they are a continuation of the previously-approved use. To the extent that the juicery supplies the restaurant and/or store and is available for public tours, it could be considered visitor-serving.

There are two concerns about the resultant permitted mix of uses: intensity and future alteration. The overall mix of uses could be found appropriate under the Neighborhood Commercial designation, as discussed above. But the approved mix results in an intensity of use that may be problematic, as discussed under the previous Community Character and Visual findings, and the following Traffic and Parking findings. Because the intensity needs to be lessened in order to reduce parking needs in order to mitigate visual impacts, then a reexamination of the mix of uses is in order to ensure that visitor-serving uses are proportionally maintained.

Furthermore, under the approved permit, the mix of uses can change, pursuant to only a County Level 1 (administrative) permit, that would not be subject to further public hearing nor possible Commission review. For example, the plans show five overnight accommodation units. The offices, microjuicery, and warehouse could be reduced or eliminated to allow more visitor units in the future. If they were completely eliminated, there could be up to 21 more overnight rooms at 330 square feet each. On the other hand, the five planned visitor units could be converted to manufacturing and/or warehousing (they could not be completely converted to restaurant or retail because that would generate excessive parking). Thus, there is not a guarantee of the future mix of uses being in keeping with the mandate of the land use plan. Therefore, a substantial issue is raised by this aspect of the cited contention.

**Previous Permit:** Appellants' also allege that the previous conversion of the building to allow juice manufacturing and selling was unpermitted. The appellants' contentions are not entirely accurate. An after-the-fact permit was issued by the County in 1984 for the conversion. (There appears to have been a procedural flaw in that it was termed a coastal permit, but was not processed according to all the coastal permit regulations; i.e., no public hearing and not forwarded to the Commission.) That permit was conditioned to make the facility more visitor-serving by having on-site juice retail sales and any future uses be tourist-serving. There is a reference to a master plan being completed in two to five years (i.e., by 1989), but there is no apparent sunset for the juice manufacturing use -- the approved and until recently current use. Although procedurally inadequate, the appropriate time to address this concern was circa 1984 when the new (juicery) use was permitted and began. Since the new permit is conditioned to supercede all previous permits, will result in new uses, and can be conditioned to require appropriate uses, no substantial issue is raised by this aspect of the cited contention.

**Priority Use:** The proposed visitor-serving use of part of the project is a second priority use, after agriculture, under the County land use plan. The certified land use plan map shows the

site within an urban enclave and designated for commercial use. The site is not suitable for agricultural use of the soil due to its small size, building coverage, and rural service area location. A 1974 County Use Permit allowed the conversion of an agricultural use (packing shed) to work shops, studios, and watchman's living quarters. Therefore, this aspect of the appellants' contention does not lead to a substantial issue.

***f. De Novo Coastal Permit Conditions***

In order to approve a coastal permit for this site, the proposed project must be consistent with all of the governing local coastal program policies cited in subsections "b" and "c" above. It also must be consistent with Coastal Act Chapter 3 Public Recreation policies. These relevant policies include:

**30221:** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

**30222:** The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

**30223:** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

It is clear from a reading of all of these local and state policies that visitor uses should be emphasized. As found above, in general the mix of allowed uses satisfies these policies.

As discussed in the visual resources finding, this project needs to be scaled back to reduce adverse scenic impacts. The result will be an approximately 33 to 45 car parking lot to serve the main building in addition to the outbuildings (consisting of a boat house, greenhouse, and shed). The exact number of parking spaces will depend on a revised configuration that the applicant will have to prepare consistent with County standards. Thus, there will have to be a commensurate scaling back of the intensity of uses. The least intensive of these uses from a parking perspective are warehousing (1 space/1000 sq. ft.) and manufacturing (1 space/600 sq. ft.). However, these uses are not necessarily appropriate for the subject oceanfront location, under the local coastal program or Coastal Act. The County approved them only in conjunction with a (visitor-serving) restaurant and juice bar operation. However, such food service operations require substantial parking (1 space/100 sq. ft.).

In determining an appropriate and achievable overall mix of uses for the building, the applicants will have to decide if a restaurant could still be included (e.g., they may opt for more overnight units instead, see below). Given the existing size of the building, its historic and permitted manufacturing and warehousing uses, and the associated low parking requirement, the continuance of some mix of warehousing and manufacturing uses may be desirable to maintain in the building, despite their

low priority. This will allow for more intensive visitor-serving use of the remainder of the building. But, because maintaining some warehousing and/or manufacturing does not guarantee that there will be sufficient parking spaces for a viable restaurant and/or juice bar, the County's condition on linking the uses could be modified to apply anywhere in Davenport; i.e., manufacturing and warehousing could continue to occur on this site to support another restaurant in Davenport, not necessarily one that has to be on-site. By retaining the condition that the otherwise non-priority warehousing and manufacturing uses be linked to visitor-serving uses, the priority of use objectives of the local coastal program and Coastal Act are achieved.

The other proposed non-priority uses are residential and, potentially, office. One residence is proposed in a separate small structure (a boat) and hence does not affect overall project mix. It only requires one parking space. The other residence is proposed in the main building to be a caretaker unit. Thus, it is related to the priority uses. By retaining the County condition to limit to the site two residential dwelling units, overall priority use of the site should not be compromised. There is the slim possibility that under the conditions the applicants could decide to develop the property only with two residences (e.g., eliminate the boat house and convert the building into two very large townhouses). While this would eliminate priority uses of the structure, it would greatly reduce other impacts (e.g. grading, visual, traffic, water use) and leave opportunities for more public access on the remainder of the site.

With regard to offices, the County condition to limit them to not exceed 50% of the floor area of the building helps ensure that priority uses are maintained. Further assurance can be gained by tying allowed offices to only those that support priority uses, either the other permitted visitor uses or agricultural or maritime uses, which are also priorities under the Coastal Act. Finally, requiring at least 50% of the occupied square footage to be visitor serving assures that the overall mix of uses will be oriented toward LCP priority uses for the site. As so conditioned, the proposed project is consistent with the cited local coastal program and Coastal Act policies.

### ***3. Parking, Circulation and Public Access***

#### ***a. Appellants' Contentions:***

Appellants cite Land Use Plan policies 2.1.4 and 2.1.5 as needing to be followed (see Exhibit 5 for complete contentions). They claim that the project will create new traffic and pedestrian patterns both across Highway 1 and through the residential streets of Davenport and by Pacific Elementary School. According to the appellants, the Caltrans traffic reports did not study the consequence of increased traffic on a highway already severely impacted by logging trucks, cement trucks, and visitor traffic. The report did not study traffic during the peak summer months of July and August, and did not study the cumulative effect of other commercial projects planned. Because no EIR was done, the individual and cumulative impacts were not properly determined in the appellants' opinion.

The appellants further charge that the project does not provide clear, coordinated, safe circulation; that the project does not provide safe pedestrian access across Highway 1; does not address tour bus circulation; and does not adhere to the Caltrans model of 75 feet for penetration into parking areas at its south and north lots (see Attachment to Appeal in Exhibit 5a). According to appellants, highway signs disallowing those driving north on Highway 1 a left



turn into the southern parking lot will confuse drivers and encourage them to circle through residential street in order to enter the parking lot.

The appellants also claim as follows:

The present project's parking formula does not provide for the necessary parking facilities identified in GP Figure 2-5, titled Conservation of Coastal Land Resources, Coastal Priority Sites, North Coast - Davenport Bluffs [GP 2.23 (LCP)]. As identified under the heading 'Circulation and Public Access Requirement', parking for the Davenport priority sites 058-072-01, -02 and -03 is to be on parcel 058-121-04, the present project site. The failure of the present project to provide this necessary parking limits access to these Davenport priority sites.

The present project fails to provide necessary on-site recreational transit facilities, including parking spaces for buses and shuttle services to accommodate additional tour and whale watching excursion buses generated by the development's visitor services.

The Variance in the 10 foot minimum front yard setback does not conform with the Local Coastal Plan because it is inconsistent with the character of Davenport in addition to contributing to a hazardous condition along Highway 1.

With respect to beach access, the appellants cite Coastal Act policy 30210 and *General Plan* policies 7.7.b, 7.7.c and 7.10-12 as supporting their positions Furthermore, they fear:

If the project proceeds, pedestrian access to the ocean will be impeded by increased traffic on Highway 1 caused by an estimated 466 extra daily trips. Physical access is further impeded by the *myoporum* trees planted by Mr. Bailey without an encroachment permit in the highway right-of-way. The *myoporum* trees dangerously restrict pedestrians' sightline when crossing Highway 1. Further pedestrians already on the west side of Highway 1 are imperiled when they try to walk north along Highway 1 to the overlook area because the trees crowd them into Highway 1 traffic. (See GP 3.10.1, 3.10.4, 3.10.5) Physical access is further impeded by the developers' proposed stairway to the beach: pedestrians must walk through a 65+ car parking lot to reach the stairway, and at the bottom of the proposed stairway pedestrians must walk along the railroad track for an extra 220 yards before reaching a path down to the beach (the current path developed through prescriptive use requires that a pedestrian cross the railroad track and walk for 100 yards.)...Thus the development fails to provide adequate physical and visual access and interferes with such use.

***b. Applicable Coastal Act Provisions***

For projects, such as the subject one, which are located seaward of the nearest public road, the Coastal Act's access policies, as summarized below, are germane to an appeal:

**Section 30210.** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

**Section 30211.** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

**Section 30212.** (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,...

**Section 30212.5.** Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

**Section 30213.** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

***c. Applicable Local Coastal Program Land Use Plan Provisions:***

The following *1994 General Plan and Local Coastal Program for the County of Santa Cruz* provisions are especially applicable to this contention:

**Objective 3.3 Balanced Parking Supply.** To require sufficient parking to meet demand, but limit parking supply and use available parking as efficiently as possible to support trip reduction objectives.

**3.6.1 Transit Friendly Design.** Locate and design public facilities and new development to facilitate transit access, both within the development and outside it.

**3.6.2. Recreational Transit Facilities.** Require new recreation and visitor-serving development to support special recreation transit service where appropriate, including but not limited to, construction of bus turnouts and shelters, parking spaces for buses and shuttle service, and bus passes for employees and subsidies for visitor serving transit services.

**3.10.1 Pathways:** Require pathways for pedestrian and bicycle use through cul-de-sac and loop streets where such access will encourage these modes of travel as part of new development.

**3.10.4 Pedestrian Traffic.** Require dedication and construction of walkways for through pedestrian traffic and internal pedestrian circulation in new developments where appropriate.

**3.10.5 Access.** Ensure safe and convenient pedestrian access to the transit system, where applicable in new developments.

**3.10.7 Parking Lot Design.** Provide for pedestrian movement in the design of parking areas.

**7.6.2 Trail Easements.** Obtain trail easements by private donation of land, by public purchase, or by dedication of easements...

**7.7.1 Coastal Vistas.** Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...

**7.7.15 Areas Designated for Primary Public Access.** The following are designated as primary public access, subject to policy 7.6.2: North Coast...Davenport bluff, Davenport Beach...

**7.7.10 Protecting Existing Beach Access.** Protect existing pedestrian...access to all beaches to which the public has a right of access, whether acquired by grant or through use, as established...Protect such beach access through permit conditions such as easement dedications...

**7.7.11 Vertical Access.** Determine whether new development may decrease or otherwise adversely affect the availability of public access to...beaches and/or increases the recreational demand. If such impact will occur, the County will obtain as a condition of new development approval, dedication of vertical access easements adequate to accommodate the intended use, as well as existing access patterns, if adverse environmental impacts and use conflicts can be mitigated, under the following conditions: (a) Outside the Urban Services Line: to pocket beaches if there is not other dedicated vertical access; ...; to bluffs which are large enough and of a physical character to accommodate safety improvements and provide room for public use as a vista point...

***d. Applicable Local Coastal Program Implementation Program Provisions***

County Code Section 13.10.552 requires the following amount of vehicular parking spaces:

- 1 per 200 sq. feet of office, retail

- 1 per 100 sq. feet of restaurant plus .3 per employee
- 1 per habitable room of a visitor accommodation
- 1 per 1,000 sq. feet of warehouse
- 1 per 600 sq. feet of manufacturing with a minimum of 2
- 1 per 33 sq. feet of meeting room
- 1 space per 200 sq. ft. of public buildings and grounds
- 2 per one-bedroom residence.

Bicycle parking, loading facilities, and handicapped parking are also required.

The following Code Section 13.10.553 allows a variance to these standards:

(b) **Reductions in Required Parking** Parking facilities for two or more uses that participate in a parking agreement may be shared thereby reducing the overall parking requirement for the uses if their entrances are located within three hundred (300) feet of the parking facility, if their hours of peak parking do not coincide, and /or it can be demonstrated that the nature or number of uses of the facilities will result in multipurpose trips.

Reductions in the total number of parking spaces may be made according to the following table:

<u>Number of independent property users</u>	<u>Reduction allowed</u>
2-4	10%
5-7	15%
8 or more	20%

Code Section 15.01.060(b) provides:

**Trail and Beach Access Dedication:** As a condition of approval for any permit for a residential, commercial, or industrial project, an owner shall be required to dedicate an easement for trail or beach access if necessary to implement the General Plan or the Local Coastal Program Land Use Plan.

The following Section 15.01.070(b)1 sets the standards:

- (i) Shoreline access easement shall be a minimum of five feet wide.
- (ii) Easements along proposed trail corridors or adopted trail corridors of for bluff top lateral access shall be a minimum of ten feet wide.

Code Section 13.11.074(a)2 provides:

**Standard for Pedestrian Travel Paths:** (i) on-site pedestrian pathways shall be provided from street, sidewalk and parking areas to the central use area. These areas should be delineated from the parking areas by walkways, landscaping, changes in paving materials, narrowing of roadways, or other techniques.

***e. County's Action/Response:***

The approved project plans show an entranceway in the Highway One right-of-way connecting the highway to an upper 66 space parking lot, a lower 13 space parking lot, two pedestrian trails, and three benches on the bluff seaward of the upper parking lot.

**Traffic:** With regard to traffic, County Development Permit Finding No. 4 states that the proposed use

will not generate more than the acceptable level of traffic on the streets in the vicinity... The increase in traffic generated by the project at build-out will be 28 vehicle trips/weekday peak hour and 35 vehicle trips/weekend peak hour. These increases in peak hour volumes will not change the operational level of service on this segment of Highway from its current LOS rating of "C".

In a December 18, 1998 letter, the County responded to the appellants' contentions noting that Caltrans approved the traffic study (see Exhibit 6 for complete letter):

The traffic study prepared by Higgins and Associates dated November 15, 1996 was based on traffic counts conducted on Saturday, September 28, 1996 and Tuesday, October 1... According to Caltrans Highway 1 traffic volumes on these dates are 3% below annual average traffic volumes and therefore the counts were accepted by Caltrans qualitatively representing annual average conditions for peak hour traffic.

The County letter further notes that some operational conflicts were identified by Caltrans at the entrances to both project parking lots in large part because, as originally designed, they were offset from the proximate street intersections. To mitigate such conflicts, the project was redesigned to align the parking lot entrances so they are directly opposite Ocean Avenue and Davenport Avenue. Permit condition #V.F.a. requires that the intersection design be consistent with Caltrans specifications. The design of the two entrances has been reviewed and approved in concept by Caltrans.

The County staff report to the Board of Supervisors for October 20, 1998 notes:

Due to a vertical curve that restricts good sight visibility near the Davenport Avenue intersection no north bound left turns will be permitted into the existing, southerly parking lot.

Highway 1 signage will advise the motorist. (Permit condition V.F.b.) The County staff report further notes that there is a flashing caution light at the Ocean Avenue/Highway 1 and the speed limit through Davenport is reduced to 45 MPH. Caltrans staff conducted a pedestrian safety analysis for the segment of Highway 1 in Davenport (summer 1998) and concluded that there is not enough vehicular nor pedestrian traffic at any Davenport intersection to warrant a traffic signal. The analysis found that the town has "a very good pedestrian safety record" and did not recommend identifying crosswalks across Highway 1 in any manner since it could provide a false sense of security to pedestrians.

According to the County staff report, Caltrans identified two problems: the 45 MPH speed limits not being obeyed nor enforced and tour busses being parked facing the wrong direction in unsafe locations where they discharge visitors who are unfamiliar with traffic conditions but have a false sense of security. To minimize the traffic circulation problems the project parking lots are large enough to allow tour busses to turn around rather than park illegally. Permit Condition VI.G. requires busses to only use the new 66 vehicle parking lot to discharge passengers. Regarding speeding, greater enforcement by the Highway Patrol is needed.

**Parking:** The approved project includes two parking lots: a lower one of 13 spaces and an upper one 66 of spaces. 79 parking spaces are required (up to 40% may be compact, and four must be for handicapped), based on a 20% reduction due to the mixed-use nature of the proposed project. Two loading spaces and 23 bicycle parking spaces are also required. Under condition VI.G buses must only park in the lower lot.

Regarding the appellants' contention that the project fails to provide parking for the adjacent Davenport Bluff priority sites, the County December 18, 1998 letter explains:

...[General Plan/LCP] policy 2.23 requires that the design of future parking on the project parcel must be coordinated with future parking on the adjoining parcels to the north, or vice versa, depending on which parcel is developed first. This policy is met by condition IIIC which requires the entrance to the new Bailey/Steltenpohl lot shall become the common entrance for the project parcel and any future parking on the adjoining parcel to the north if that parcel is ever developed in the future. A non-revocable right-of-way will be granted to the adjoining parcel over the common driveway and a 20 foot wide connecting route to the common property line of the two parcels...

**Pedestrian Paths:** With regard to public access, the County's approval requires the dedication of a permanent pedestrian easement (1) over the trail south of the building, (2) over the trail route from the proposed northern parking lot, and (3) construction of an access stairway from the parking lot down the railroad bluff cut to the railroad right of way where it meets an existing trail that parallels the railroad tracks to join the southern beach access trail. The 4 foot pedestrian easement across the parking lot will be delineated by a different type of paving material. The stairway will replace less formal trails where the public now scrambles down the bluff at several locations generating erosion gullies.

In a December 18, 1998 letter, the County responded to the appellants' contentions by explaining that the *Myoporum laetum* shrubs currently exist and are maintained under a 1974 permit (#74-124-U) as a requirement to screen the existing building. The approved project requires the continued maintenance of the shrubs.

Only the trail located south of the building is proximate to the *Myoporum laetum* shrubs. Currently this trail is the most heavily used access to Davenport Beach... County staff does not understand how any reasonable assessment of pedestrians crossing Highway 1 would conclude that the

shrubs would limit traffic visibility for pedestrians. A site inspection will confirm this.

Condition #IIID requires the applicant to obtain an Encroachment Permit from Caltrans for the installation and maintenance of landscaping within the State right-of-way.

As to the setbacks, the December 18, 1998 County letter indicates:

The County approval included a Variance to reduce the normal 10 foot front yard setback to 0 feet for a 53 lineal foot section of the 202 foot long building. The remainder of the building would be setback from the front property line a significantly greater distance than 10 feet and meet all other zoning site standards...Included in the findings is the fact that the approved reconstruction of the building removes a portion of the existing building from extending into the undeveloped edge of the Highway 1 right-of-way and moving this portion of the building back to a 0 foot setback from the property line will still result in a substantial separation between this part of the building and the paved road shoulder...

**Viewing Area:** The December 18, 1998 County letter responded to the appellants' contentions regarding view areas for whale watching as follows:

Currently, people park their vehicles and stand on the vacant portion of this privately owned parcel to watch for whales and enjoy coastal views. This portion of the property will become a formal parking lot with an open space viewing area at the entire southern (coastward) edge of the parking area. The open space area must be a minimum of 25 feet in width and will include 3 viewing benches for the public...this viewing area will contain meadow grasses and forbs.

***f. Substantial Issue Determination:***

**Traffic:** The Commission accepts the County's findings with regard to traffic. First, the Commission notes that under the Coastal Act, visitor traffic has priority for use of highway capacity. Second, while the proposed project may generate some additional pedestrian travel across Highway One, the problem of conflict with moving vehicles already exists and is not the applicants' to solve. If the flashing light is not effective enough, then there are other traffic calming measures that Caltrans can take to slow vehicles travelling through Davenport. Similarly, if some vehicles destined for the proposed project use local streets as a convenience, then the County can take measures to discourage this practice.

However, the issue with the screening vegetation in the Caltrans right-of-way and the zero setback is some cause for concern for two reasons. First, if Caltrans ever decides it does not want the landscaping, then most of the screening will be lost as there is little room on the parcel for landscaping, especially where the building abuts the property line. Second, the zero setback blocks the opportunity to create a pathway along Highway One. Although County staff explained that sidewalks are not in keeping with the semi-rural environment of Davenport and are never required for any development project in the town (1/15/99 Tschantz to Hyman),

some type of pathway or boardwalk along the highway would appear to be an option to not foreclose.

**Parking:** Contentions regarding adequate parking have some merit. As noted, the local coastal program provisions for parking are met through use of a reduction allowed for mixed use. Without the reduction, 99 spaces (20 more) would have been required. The Commission must assume that this latter standard will address parking needs. The problem is that if the various uses draw different users, then the 20% reduction may not be justified and there would be little room on-site to add more spaces.

Another problem is the loss of overlook and beach parking. A portion of the site contains an unpaved area on which the public has long and continuously parked without restriction. Although counts are not available, site inspections and aerial photo review (1967, 1978, 1987, 1990) reveal the continuous pattern of use on this parking area. The appellants indicated, and staff has observed, that between three and ten cars is common; whether they are all on the subject site or partially on the adjacent site is unknown. The *Davenport Beach and Bluffs Addendum to the General Plan for the North Coast Beaches* estimates 40 vehicles parked in the area during summer weekends.

Coastal Act Section 30211 requires that new development not interfere with public access rights acquired through historic use. Such "prescriptive rights" must be formally determined by court decision. While no such formal legal determination of prescriptive rights has been made for this site, the established pattern of long term use could potentially give rise to such rights. Absent a formal determination of prescriptive rights, in cases where there is a potential for such rights, new development needs to be designed and located to protect existing public access opportunities and to avoid prejudice to a future determination of public rights. At this site, a sign is currently posted informing the public that their right to pass is by permission of the property owner under Civil Code section 1008. The effect of this posting, again, ultimately would have to be decided by the courts.

As approved by the County, the proposed project theoretically needs every one of the designated 79 spaces, including spaces on the upper bluff level historically used by the public. None would be left over for the public who do not patronize the project. Only some of the uses proposed are visitor-serving and whether they will cater to the drive-by public is uncertain. There is nothing in the County approval to prevent site owners from privatizing the parking; e.g., requiring all who park there to patronize the establishment. Furthermore, with all possibility of public parking potentially precluded, the motoring public who wishes to stop will have to park elsewhere, thereby, generating a cumulative parking and visual issue, as discussed in other findings. Thus, a substantial issue is raised by the parking contentions.

**Pedestrian Access:** The contentions with regard to pedestrian access are of some concern. As noted, public pedestrian access is being provided by the proposed project. While it may not be the most convenient, the ownerships and terrain render it logical. The subject site is on a bluff, with a steep grade to the railroad track below. Seaward is a separately owned parcel. More functional access may be available on adjacent parcels to the north and south and seaward of the subject site. Nevertheless, the permit could have accounted for the possibility that rail use (which is only a few times per week) may cease and should have required a wider



easement offer (at least 10 feet as specified in the *Code*) along the tracks that traverse the subject site.

With regard to access through the site, the approval follows one *Code* option to differentiate the pavement treatment through the parking lot. Nevertheless, the approved design is bound to lead to conflicts between pedestrians traversing the site from Highway One to reach the stairs down the bluff and vehicular traffic in the lot. It is also one foot short of the minimum required five foot width. Thus, the provision of pedestrian access raises a substantial issue.

***g. De Novo Coastal Permit Findings***

In order to approve a coastal permit, the cited access, parking, and traffic provisions have to be met.

**Public Access Trails:** As noted, the project included two trails from the Highway and one connecting trail along the railroad tracks, as approved by the County. One of the trails shown on the plans and specified in Condition III.C is located in the lower portion of the property south of the building. This trail already exists and provides a key link for accessing Davenport Beach from Highway One. A previous County permit requirement (County permit 74-124-U, condition #6) for this site required permanent, unobstructed public access. However, that condition did not actually require a recorded dedication and that earlier permit will be superceded by this new permit. Therefore the County required a legal dedication pursuant to the cited access provisions, specifically mentioning policy 7.7.15 in its findings and concluding, “ the project has been conditioned to require that a permanent pedestrian easement be placed over this trail to ensure that public access along the trail continues in perpetuity.”

The plans show and the County also required an access dedication on the upper, northern portion of the property from Highway One, down the bluff, and along the railroad tracks. Requiring this pathway as mitigation is also appropriate, given that this new permit will result in intensified commercial use of the site, and this intensified use will now extend to this upper portion of the property, which has some historic level of public use already. With the required revised parking lot design, this accessway can be located so as not to have to cross a parking lot (see Exhibit 4). The Commission concurs with the County that it is desirable to consolidate the four existing trails down the bank with one formalized stairway in order to minimize erosion (which could become more severe with more intensive site use), as shown on the applicants’ plans. The County found,

To solve the erosion problem and provide a second trail access to the beach, the project has been conditioned to require that the applicant construct a stairway down the steep slope to replace the four damaged trail routes. The condition includes placing the stairway and a connecting trail under a permanent pedestrian easement as well as a route that connect the stairway to Highway 1 so that complete pedestrian access is provided from Highway 1 to the beach without causing erosion problems on the steep slope.

The stairway leads to an existing path along the railroad tracks at the western property boundary. Although there is already an easement for the railroad use in this area, there is the future potential to convert that area into a pedestrian pathway. Thus, the County appropriately required an easement for trail use here as well. The easement widths shall be ten feet minimum as called for in the County Code. Also, the Commission has made nonsubstantive changes to the conditions imposed by the County to conform the conditions to the Commission's practices concerning document recording. With regard to the building setback variance, the current building is significantly non-conforming under the County Code because it extends beyond the property line. No major reconstructions are allowed to significantly non-conforming structures without specific findings being made under section 13.10.265.j. Given that the right-of-way into which the current building intrudes may be needed in the future for public or vehicular access purposes, it would be difficult to make such findings. Instead, the County granted a variance to allow for a "0" setback, thereby requiring the portion of the building within the Caltrans right-of-way to be removed, as shown on the applicants' plans. Actually, the County-approved plans show about a four foot setback from the property line at the Highway One right-of-way to the base of the structure. The roof of the building extends closer. This leaves some room for an accessway on the property by the building, if necessary. Therefore, with a condition that there be a four foot setback from the property line, the variance is appropriate for the reasons stated in the County's findings (see Exhibit 2). These are incorporated by reference with the substitution of the "PR" setback of 30 feet being varied, not the "C-1" district's 10 foot setbacks.

**Parking:** In order to meet the visual policies, staff is recommending conditions to reduce the area available for parking. Therefore, a corresponding condition is necessary to ensure that the uses of the project do not generate a parking demand (based on County standards) that exceeds the available parking area. This will involve a two-step process. First, the applicant will have to redesign the parking area, based on County standards and calculate the amount of spaces available. Then, these will have to be allocated among uses. The essence of County conditions IV. A.7, IV.A.8, IV.A.9 regarding parking lot requirements can be retained; however, the required bicycle spaces, loading areas, etc., have to be recalculated based on the final approved uses of the permit.

Ideally, the existing parking area that the public has used to enjoy the Davenport coast should be retained. Since, the parking lot must be formalized to support the new uses of the building, the public nature of the historic and future uses must be factored into the final design. There are three complementary ways to achieve this objective.

First, there should be no reduction in the amount of spaces typically required by the LCP, as the County permit allowed based on multiple uses (20%). This reduction is discretionary under Code Section 13.10.553(b) and is not appropriate for this project. While this conditioned approval leaves the final mix and amount of uses up to the applicants, it emphasizes visitor-serving uses. For such uses, there is a high likelihood that at times they will occupy all of the required parking spaces. Therefore, allowing a parking reduction based on an assumption that one vehicle's occupants will access several uses on-site is not appropriate.

Second, the calculations need to account for all associated public use of the site. It can be surmised that the existing level of public use on the site will continue if given the opportunity.

The existing parking area on the site holds approximately 15 vehicles, with more autos often parking in the adjacent Caltrans right-of-way. Unfortunately, parking counts are not available, but Commission staff observations over the years and other information in the record indicate that the area does receive significant use. The County-approved project plans show outdoor paths and benches and building decks, corridors, and restrooms available to the general public. This means that public use of the site not directly associated with the new commercial uses is even likely to increase.

The County Code requires one parking space per 200 square feet of public buildings and grounds. Since the project plans require revision (and hence the final general public square footage, if any, is unknown) and since the ordinance does not provide detailed guidance as to what would constitute “public grounds” for purposes of calculating parking, setting a reasonable allocation at this time is preferable. Assuming there will be at least 1,000 square feet of public available space (i.e., requiring five parking spaces) and assuming that at least one-third of the existing parking area (i.e., fitting about five cars) is typically occupied during winter whale watching and summer weekends, allocating five spaces to general public uses as part of the determination of allowed uses versus parking availability is appropriate.

Third, applying these calculations will theoretically ensure that some parking spaces continue to be available to the general public. However, the parking formulas represent averaged circumstances. Depending on many factors, including the time of day and the exact nature of the uses, the proposed parking lot, as conditioned, will likely have a varying number of vehicles in it and may even be full on occasion. That, of course, is the current case as well; however, there is little competition among broad user groups (i.e., all of the parking in the upper area is available to the general public and the parking associated with the private building uses has been generally confined to the lower area).

Ensuring that there is no specific reservation of spaces nor other management technique that precludes the historic use of the upper site, as conditioned, is necessary for the following reasons. The site uses will be intensified, some of the new uses may not be visitor-serving, and the other new uses, while visitor-serving, will be oriented indoors, as opposed to the trails to the beach and overlooks. Furthermore, not only is an area the equivalent of about 15 spaces on the applicants’ site being formalized under this proposal, but also some additional area within the Caltrans’ right of way that is now available for and used for public parking will become unavailable due to the new formalized entrance to the applicants’ new parking lot. By not over-allocating the new parking spaces to building uses (i.e., by not providing for a reduction from the number of required spaces), by allocating five spaces to the non-specific, public uses of the building and site, and by retaining the first-come, first-serve situation on the upper lot, as conditioned, the Commission’s action will be consistent with the various applicable local coastal program and Coastal Act public access policies including those that require that approval not prejudice any potential public rights that might exist on the upper portion of the property with regard to vehicular parking to view or otherwise enjoy the Davenport coast.

**Traffic:** The conditioned reduction in project intensity will serve to reduce the amount of traffic generated on the site. This will mean somewhat less traffic on Highway One than projected for

the project as originally proposed. And, this greater amount did not result in any policy inconsistency. The Commission, thus, incorporates the County finding that, "These increases in peak hour volumes will not change the operational level of service on this segment of Highway One from its current LOS rating of 'C.'" Furthermore, to ensure smooth traffic flow and minimize impacts, County conditions II.D, V.F and VI.G, developed in consultation with Caltrans regarding encroachments and a "4-legged" intersection with Highway One, can be retained.

**Conclusion:** As so conditioned in the manners described, the proposed project is consistent with the cited local coastal program provisions and with Coastal Act Chapter 3 public access policies.

In approving this permit for a modified project, the Commission recognizes that there is a need for continued and improved public parking in the Davenport area. While the project as proposed provided a possible entrance to a future lot, there is no assurance at this time that such a lot will, or should, be built particularly in light of its visual impacts. In addition to public parking provisions being built into specific project reviews, the current Davenport Town Planning exercise under the official auspices of the Board of Supervisors needs to be completed. In particular, there should be a focus on reexamining the *North Coast Beaches Plan* proposals together with other possible parking strategies, including the use of areas across the railroad tracks where automobiles might be hidden. Based on the conclusions of such an exercise, a future coastal permit could revisit the issue of parking for this particular site.

#### **4. Public Services: Sewer and Water**

##### **a. Appellants' Contentions**

**Wastewater:** The appellants contend with regard to sewer service (see Exhibit 5 for complete contentions):

Davenport is within the Rural Services Line (LCP 2.3.5). Sanitation facilities within the Rural Services Line should provide for adequate sewage collection, treatment and disposal (LCP 7.20). Community sewage disposal systems shall be sized to serve only the buildout densities for lands within the Rural Services Line (LCP 7.20.1).

The appellants further contend that the Davenport sewage system is not capable of serving the project's sewage needs; the system is over 70 years old; the pipes are in dire need of replacement; the County has applied for a grant to replace the system; but no funds have been appropriated. Additionally, they claim that the funds are to replace the existing system, not to enlarge the system. They believe that the Negative Declaration did not adequately address whether the system could provide for existing vacant parcels within the Rural Services Line.

Furthermore, the appellants' state:

The present project does not have a letter from the Davenport Water and Sewer District stating that the required level of service for sewer discharge

will be available *prior to issuance of building permits*. In addition, the present project does not conform with the Local Coastal Program because the County decision making body did not, and could not, considering the cumulative impacts of the project, determine that the present project has adequate sewage treatment plant capacity.

**Water:** The appellants' state with regard to water supply:

There is a question as to whether the project will negatively impact Davenport's water source, San Vicente Creek.

There is concern that the project will significantly impact the watershed. Fish and Game has questioned the completeness of the Initial Study regarding water availability, water quality, and water quantity (i.e., maintaining the natural runoff – when one puts in impervious surfaces, the run-off needs to be retained). Fish and Game also has questioned the cumulative impact of present and future projects utilizing San Vicente Creek and thus potential impacting the habitat of state endangered species, such as coho salmon; and federal threatened species, including the red-legged frog, steelhead trout, and coho salmon. If an EIR had been conducted, all of these issues would have been addressed.

The present project does not conform with the Local Coastal Program because it did not acquire, and does not have on record, a letter demonstrating the availability of adequate water supply for the proposed development or addresses its cumulative and growth inducing impacts (LCP 7.18.2).

***b. Applicable Local Coastal Program Provisions:***

The following *1994 General Plan and Local Coastal Program for the County of Santa Cruz* provisions are applicable to these contentions:

**2.1.4 Siting of New Development.** Locate new residential, commercial, or industrial development, within, next to, or in close proximity to existing developed areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on environmental and natural resources, including coastal resources.

**2.2.2 Public Infrastructure (Facility and Service) Standards for General Plan and Local Coastal Program Amendments and Rezonings:** For all...rezonings that would result in an intensification of...land use, consider the adequacy of the following services, in addition to those services required by policy 2.2.1 [water, sewer, etc.] when making findings for approval. Allow intensification of land use only in those areas where all service levels are adequate, or where adequate services will be provided concurrent with development...

**5.6.1 Minimum Stream Flows for Anadromous Fish Runs.** Pending a determination based on a biologic assessment, preserve perennial stream flows at 95% of normal levels during summer months, and at 70% of the normal winter baseflow levels. Oppose new water rights applications and time extensions, change petitions, or transfer of existing water rights which would individually diminish or cumulatively contribute to the diminishment of the instream flows necessary to maintain anadromous fish runs and riparian vegetation below the 95%/70% standard.

**5.6.2 Designation of Critical Water Supply Streams** Designate the following streams, currently utilized at full capacity, as Critical Water Supply Streams: Laguna, Majors, Liddell, San Vicente, Mill, and Reggiardo Creeks;... Oppose or prohibit as legal authority allows, new or expanded water diversion from Critical Water Supply Streams. Prohibit new riparian or off stream development or increases in the intensity of use, which require an increase in water diversions from Critical Water Supply Streams. Seek to restore in-stream flows where full allocation may harm the full range of beneficial uses.

**Program G** [under Chapter 5.6] Develop more detailed information on streamflow characteristics, water use, sediment transport, plant and soil moisture requirements, and habitat needs of Critical Water Supply Streams and streams located in the coastal zone. Use this information to formulate a more detailed strategy for maintenance and enhancement of streamflows on Critical Water Supply Streams and to better understand the role of streamflows in watershed ecosystems and provide a basis for cooperative management of watershed ecosystems/

**Objective 7.18b Water Supply Limitations.** To ensure that the level of development permitted is supportable within the limits of the County's available water supplies and within the constraints of community-wide goals for environmental quality.

**7.18.1 Linking Growth to Water Supplies.** Coordinate with all water purveyors and water management agencies to ensure that land use and growth management decisions are linked directly to the availability of adequate, sustainable public and private water supplies.

**7.18.2 Written Commitments Confirming Water Service Required for Permits.** Concurrent with project application require a written commitment from the water purveyor that verifies the capability of the system to serve the proposed development. Project shall not be approved in areas that do not have a proven, adequate water supply. A written commitment is a letter from the purveyor guaranteeing that the required level of service for the project will be available prior to the issuance of building permits. The County decision making body shall not approve any development project unless it determines that such project has adequate water supply available.

**7.18.3 Impacts of New Development on Water Purveyors.** Review all new development proposals to assess impacts on municipal water systems, County water districts, or small water systems. Require that either adequate service is available or that the proposed development provide for mitigation of its impacts as a condition of project approval.

**7.19.1 Sewer Service to New Development:** Concurrent with project application, require a written commitment from the service district. A written commitment is a letter, with appropriate conditions, from the service district guaranteeing that the required level of service for the project will be available prior to issuance of building permits... The County decision making body shall not approve any development project unless it determines that such project has adequate sewage treatment plant capacity.

**7.20.1 Community Sewage Disposal Systems, ...**Within the Rural Services Line. ...Community sewage disposal systems should be sized to serve only the buildout densities for lands within the RSL.

***c. County's Action/Response:***

The proposed project is estimated to daily use 5,300 gallons of water and generate 4,792 gallons of wastewater , which is an eight percent increase in the district's wastewater generation, according to the County staff report.

In a December 18, 1998 letter, the County responded to the appellants' contentions by noting that environmental evaluations during the public process acknowledged the limitations in the water and sewer systems of the Davenport Water and Sanitation District which is operated by the County Public Works Department (see Exhibit 6 for complete letter). The processing for upgrading both systems has begun:

The U.S. Department of Agriculture has already approved \$663,750 towards a \$885,000 project to upgrade the sewer system...Public Works has secured a grant for 5% of the cost from the Small Communities Grant Program and has also a loan for 20% of the cost from the State Revolving Fund.

County permit condition IV.C requires:

To prevent over capacity problems from being exacerbated from project sewage discharges into the Davenport Water and Sanitation District's sewer system, the owner/applicant shall pay the appropriate sewer connection charges, as calculated by the District, to pay for the necessary sewer system upgrades. At least 50% of the total fee charges shall be paid prior to the issuance of a Building Permit for phase 1 of the project. An additional payment of at least 43% of the total charges shall be paid prior to issuance of the Building Permit for phase 2 construction. The remaining 7% of the total charges shall be paid prior to issuance of the Building Permit

the phase 3 construction. A Certificate of Occupancy shall not be issued by County Planning for any construction phase until the planned sewage system improvements have been completed by the Davenport Water and Sanitation District.

The County letter goes on to explain:

Regarding domestic water service, the DWSD has repeatedly stated that the volume of water is not the constraining factor for the system; rather the limited capacity of the treatment facilities is what needs to be improved to serve the existing demand. The DWSD is presently negotiating with the largest industry in the Davenport area, RMC Lonestar Cement Company, on a mutually beneficial plan to upgrade the water treatment facilities.

County permit condition IV.B provides:

To prevent over utilization of the Davenport Water and Sanitation District's domestic water supply, the owner/applicant shall provide the necessary improvements to the District water treatment plant as determined by the District for an additional 3,000 gallons/day of domestic water use. The installation of improvements may be spread over a time period specified by the District as long as, at least one-half of the necessary improvements are installed prior to the final inspection and clearance of the Building Permit for phase 1 of the project and all remaining improvements are completed prior to the final inspection and clearance for phase 2.

***d. Substantial Issue Determination***

Although the County has tried to balance the need to upgrade the wastewater and water systems with the policy requirements, technical violations of the policies have occurred. Apparently in return for allowing the project to proceed if the applicants pay for system upgrades, the County has disregarded the policy stipulations that upgrades be in place before the building permit for project construction is issued.

**Wastewater:** With regard to wastewater, a written commitment to serve was issued by the Davenport Water and Sanitation District, but noted that only limited sewer service was available. Thereafter, an agreement was reached whereby the applicants would pay a connection fee that would be earmarked to help pay for system upgrades. The County permit approval (condition VI.C) requires the project's applicants to pay for part of the necessary sewer system upgrades (the fee could be paid in three installments tied to three separate phases of project construction). The approval allows the building permits for the project to be issued without the service improvements being completed; instead, the County's permit postponed project occupancy until the wastewater system upgrade is completed. Thus, there is not a clear guarantee that the required level of service for the project would be in place **prior to issuance of the building permit** (as required by policy 7.19.1).

The obvious basis for the policy restriction is that once buildings are completed, there is pressure to actually allow occupancy whether or not service upgrades have been completed.



In this case, the systems and connections are in place and there are no moratoria in effect. Therefore, the permit condition could easily be amended to allow occupancy and its attendant increase in wastewater generation.

Wastewater capacity problems in Davenport in previous years (due to old collection lines into which excess water infiltrates) have led to raw wastewater discharges into the Pacific Ocean. Therefore, any increase in flows, even the estimated eight percent from this project, is significant until the system is upgraded. The Sanitation District is pursuing grant funding for a project to replace leaky sewer mains.

**Water:** Water is provided by the Davenport Water and Sanitation District. A written commitment from the District to serve was issued, but again noting that limited capacity was available absent needed system upgrades. The water system suffers from limited water filter capacity at the water treatment plant, meaning customers may not be receiving adequately treated drinking water. Therefore, the applicants had discussions with County officials and negotiated an agreement which would allow their project to go forward. In this case, rather than require a fee, the County required the applicants to actually install the water system improvements. As with wastewater, the County conditioned the permit for the proposed project in a way that allows the building permits to be issued and ties project occupancy to water system improvement completion (condition IV.B). Thus, there is not a clear guarantee that the required level of service for the project would be in place **prior to issuance of the building permit** (as required by policy 7.18.2).

The District gets its water from Lone Star Industries, whose sources of water are San Vicente Creek and the tributary Mill Creek. While Lone Star has a riparian right, the District lacks an appropriate right for the water it diverts. No stream flow information was provided in the County permit record. USGS has calculated average annual runoff in the San Vicente watershed at 6,800 acre-feet per year. The cited land use plan policy 5.6.2 (written in the early 1980's before the juice plant was in operation) designates San Vicente and Mill Creeks as "currently utilized at full capacity." Since that policy was written the cojo salmon and the California red-legged frog, which inhabit the creek, have been federally listed as "threatened." The California Fish and Game Commission has designated San Vicente Creek as an endangered coho salmon spawning stream. Whether continued and increased water withdrawals will adversely impact the habitat and what mitigation measures might be taken is unclear. Further uncertainty is added to the overall water picture by the fact that the residential uses in the system are not metered. There is little in the County permit record, nor is there a San Vicente Creek watershed or stream management plan in place to address these issues. The Department of Fish and Game will likely be pursuing this issue as a measure to restore the cojo salmon populations (see Department's 11/24/98 letter in Exhibit 6).. In addition the District will need to perfect its water rights. These actions will be the appropriate junctures to address LCP policies regarding the protection of in-stream flows and the associated riparian habitats. .

The County's permit condition requires the applicant to provide necessary improvements to the water system in order to add 3,000 gallons to the current 2,300 gallons per day of water use. This would supply the estimated consumption of 5,300 gallons per day from the proposed uses (5.3 af/yr). It is uncertain whether or not the County's approval will result in an increased

stream diversion because the amount of water that the District is agreeing to provide represents an actual decrease in the amount of water previously supplied to this site when the building housed the juice plant. It is possible that as part of the District's obtaining the necessary water rights and addressing endangered stream habitat, additional system improvements may be required beyond upgrading the filters.

**Conclusion:** A substantial issue is raised with regard to compliance with the cited local coastal program policies requiring service commitments.

***e. De Novo Coastal Permit Findings***

In order to approve a coastal permit for the project, the cited local coastal program policies have to be satisfied. As conditioned to limit the intensity of use (by the parking limitations discussed above), the amount of water used and wastewater generated will likely be less than projected in the county permit file. For example, if the use of the building was comprised of a 2,000 sq. ft. restaurant, four offices, 1,100 sq. ft. of retail, the boat house, and 10 to 15 inn rooms with a day spa, then water use would be approximately 4,130 gpd. Another example would be a bed and breakfast or motel of some 25 to 35 rooms (some "units" may be comprised of more than one room). If there were 35 beds and a day spa, then projected water use would be approximately 4,400 gpd instead of the projected 5,293 gpd. Wastewater generation would be correspondingly reduced. (It would be about 500 gpd less, which is the amount of water use projected for irrigation.)

When the juice plant was in operation in the late 1980's and early 1990's, average daily water use was in the range of 10,000 gallons per day, since then, as noted, it has been 2,300 gpd. Therefore, the project will result in more water use than recently, but much less than in the previous period. According to the County permit file, the owners actually have paid for a water connection for 4,216 gpd. As illustrated above, they may be able to stay within this amount of use under the noted permit conditions. If not, then to comply with *1994 General Plan and Local Coastal Program* policy 7.18.2, they will need an updated written commitment from the Davenport Water and Sanitation District guaranteeing that the required level of service for the project will be available prior to the issuance of building permits, as conditioned.

With regard to wastewater the County permit file indicates that the property owners paid a sewer service connection fee for 1,405 gpd (prior to that time the parcel utilized an on-site septic system). The Sanitation District estimated that the proposed project would generate 4,792 gpd and thus required a connection fee (equaling \$43,038) based on the difference, after a 50 gpd credit for one residential unit. Just as for water, the applicants will need an updated service commitment letter for any amount of wastewater to be generated above the 1,405 gpd in order to satisfy policy 7.19.1, as conditioned.

The County conditioned the project to be completed in three phases. Such phasing seems unnecessary, especially with the required revisions to the project. But, if the revised water calculations exceed the 4,216 gpd figure or the revised wastewater calculations exceed the 1,405 gpd figure, then phasing the project and hence the building permits, would be a way of allowing some construction to occur before all the system improvements are completed. The essence of County conditions IV.A.13, IV.B, and IV.C regarding paying for the water and wastewater system improvements can be retained; the required payments would have to be

recalculated based on this conditional approval. Furthermore, County condition VI.B can be retained to require water conservation practices for landscape irrigation. As so conditioned in all of these manners, the project is consistent with the relevant local coastal program policies.

## **5. Nonpoint Source Pollution**

### **a. Appellants' Contentions**

The appellants contend (see Exhibit 5 for complete contentions):

The present project does not address the additional surface runoff generated by installing impervious surfaces e.g., parking lots. While the project provides grease traps, however effective they might be, the surface runoff leaving the traps is released onto an adjacent parcel with no further discussion. The present parcel is part of a Primary Groundwater Recharge Area.

### **b. Applicable Local Coastal Program Provisions**

The following *1994 General Plan and Local Coastal Program for the County of Santa Cruz* provisions are applicable to this contention:

**5.4.14 Water Pollution from Urban Runoff.** Review proposed development projects for their potential to contribute to water pollution via increased storm water runoff. Utilize erosion control measures, on-site detention and other appropriate storm water best management practices to reduce pollution from urban runoff.

**5.7.4 Control Surface Runoff.** New development shall minimize the discharge of pollutants into surface water drainage by providing the following improvements or similar methods which provide equal or greater runoff control: (a) include curbs and gutters on arterials, collectors and locals consistent with urban street designs; and (b) oil, grease and silt traps for parking lots...or commercial ...development.

**5.7.5 Protecting Riparian Corridors and Coastal Lagoons.** Require drainage facilities, including curbs and gutters in urban areas, as needed to protect water quality for all new development within 1000 feet of riparian corridors or coastal lagoons.

**7.23.1 New Development.** ...Require runoff levels to be maintained at predevelopment rates for a minimum design storm as determined by Public Works Design Criteria to reduce downstream flood hazards and analyze potential flood overflow problems. Require on-site retention and percolation of increased runoff from new development in Water Supply Watersheds and Primary Groundwater Recharge Areas, and other areas as feasible.

**7.23.2 Minimizing Impervious Surfaces.** Require new development to limit coverage of lots by parking areas and other impervious surfaces, in order to minimize the amount of post-development surface runoff.

**7.23.5 Control Surface Runoff:** Require new development to minimize the discharge of pollutants into surface water drainage by providing the following improvements or similar methods which provide equal or greater runoff control:...(b) construct oil, grease and silt traps from parking lots...or commercial ...development. Condition development project approvals to provide ongoing maintenance of oil, grease and silt traps.

***c. County's Action/Response***

In a December 18, 1998 letter, the County responded to the appellants' contentions (see Exhibit 6 for complete letter):

No development will occur within the...riparian habitat at the south end of the parcel. San Vicente Creek...is located 1,000 feet southeast of the project parcel. New surface water discharge from impervious surface...will occur 460 feet northwest of the parcel's riparian habitat and 1,460 feet from San Vicente Creek...

Permit conditions require: grading, drainage and erosion control plan; 25 foot bluff setback (#III.F); silt and grease trap for the parking lot (#III.G); and monitoring and maintenance of the grease trap (#VI.C).

The County letter concludes that these measures will assure that surface drainage will not be contaminated. And, because of the distance, the runoff will percolate into the soil before it reaches San Vicente Creek.

***d. Substantial Issue Determination:***

Analyzed in isolation, the County's conditions would seem to adequately address runoff concerns. But, policy 7.32.2 calls for minimizing impervious surfaces. And as noted, there are other concerns with regard to the size of the parking lot, such as it's visual impact. Therefore, a substantial issue is raised with regard to this contention.

***e. De Novo Coastal Permit Findings***

In order to approve a coastal permit for the project, all of the cited local coastal program policies have to be satisfied. This can be accomplished by retaining the County conditions III.G, V.B, and VI.C regarding drainage and erosion control. Also, as conditioned to reduce the parking lot size, policy 7.32.2's call for minimizing impervious surfaces is met. Therefore, as conditioned, the proposed project is consistent with the relevant local coastal program policies.

## **6. Archaeological Resources**

### **a. Appellants' Contentions:**

The appellants note that local coastal program section 5.19 provides that the county should protect and preserve archaeological resources for their scientific, educational and cultural values, and for their value as local heritage (see Exhibit 5 for complete contentions). They observe that the archaeological reconnaissance done for the negative declaration was limited to surface inspection. The appellants impart that the Department of Parks and Recreation (DPR) notes that Davenport is both a Coastal Indian site and an area where site information is deficient. DPR recommends that "representative areas or site should be preserved, especially in northern Santa Cruz County." Finally, the appellants state that a school employee found an arrowhead on a neighboring Lonestar oceanside parcel.

### **b. Applicable Local Coastal Program Provisions:**

The following 1994 *General Plan and Local Coastal Program for the County of Santa Cruz* provisions are applicable to this contention:

**5.19 Archaeological Resources Objective:** To protect and preserve archaeological resources for their scientific, educational and cultural values, and for their value as a local heritage.

**5.19.2 Site Surveys:** Require an archaeological site survey as part of the environmental review process for all projects with very high site potential as determined by the inventory of archaeological sites, within the Archaeological Sensitive Areas, as designed on General Plan and LCP Resources and Constraints Maps filed in the Planning Department.

**5.19.4 Archaeological Evaluations:** Require the applicant for development proposals on any archaeological site to provide an evaluation, by a certified archaeologist, of the significance of the resource and what protective measures necessary to achieve General Plan and LCP Land Use Plan objectives and policies.

Regarding Implementation, *County Code* Chapter 16.40 has detailed provisions to protect "Native American Cultural Sites."

### **c. County's Action/Response:**

In a December 18, 1998 letter, the County responded to the appellants' contentions by noting that two archaeological reconnaissances were conducted for the site: one by qualified County Planning staff in June 1997 and a second one, including literature research, by Archaeological Consulting, Inc. in July 1997 (see Exhibit 6 for complete letter). Both surveys concluded that there is no evidence of archaeological resources on the site. The County letter notes that additional investigations are required only when such surveys show indications of archaeological resources. In addition, consistent with the archaeological survey recommendations and with Sections 16.40.040 and 16.42.100 of the County Code, if during

site preparation any artifact or other evidence of archaeological resources are discovered, work shall cease and the appropriate archaeological mitigation undertaken.

The County's approval incorporated such a condition (see Exhibit 2).

***d. Substantial Issue Determination:***

The County has adequately addressed its local coastal program archaeology provisions. The Commission concurs with the analysis in the County letter cited above. Therefore, no substantial issue is raised by this contention.

***e. De Novo Coastal Permit Conditions***

In order to approve a coastal permit for the project, the cited local coastal program policies have to be satisfied. This can be accomplished by retaining the County condition V.I regarding ceasing work if archaeological resources are found. As so conditioned, the project is consistent with the relevant local coastal program policies.

***7. Cumulative & Growth-Inducing Impacts***

***a. Appellants' Contentions***

The appellants have concerns with the cumulative impacts on the Davenport community, the growth-inducing impacts immediately along the Davenport bluffs, and the growth-inducing impacts along the entire region's coastline (see Exhibit 5 for complete contentions). They contend:

The County did not address the Steltenpohl-Bailey project in terms of its cumulative impacts on current and probable future development.

The appellants list a number of future developments that they assert the County is aware of and should have considered in reviewing cumulative impacts on Davenport's sewer and water system, traffic, and scenic and historic resources. They indicate that each concern mentioned earlier in this report will be exacerbated by these additional projects.

The appellants further contend that the proposed development will provide vehicle access through the subject parcel to three adjacent parcels to facilitate their development in violation of Coastal Act policy 30240 and not in conformance with the Master Plan Requirement for priority sites.. These parcels include the RMC Lonestar parcel on the Davenport bluffs; the parcel northwest of the present project, owned by Union Pacific RR and the required dedication of an easement for access to A.P.N. 058-121-03 to the southwest of the project (also owned by Union Pacific). These parcels are outside of the Rural Service Line. One appellant contends:

Assuming development of the additional parcels at level of intensity first established by the present project infrastructure, each parcel would consume an additional 5293 gallons/day (gpd) [of water] over existing conditions. Based upon the ratios of water to sewerage discharge used for

the present parcel there will be an increase of greater than 14% in wastewater load dumped in the Davenport sewerage system per parcel. If the present project and the three adjacent parcels are developed to the level of the present project, not unreasonable..., there would be a 18,879 gpd increase in water consumption over existing conditions and greater than 50% increase in wastewater load...

The appellants claim that Davenport's coastal vista will be blocked by one continuous parking lot since the General Plan for the North Coastal Beaches, Davenport Beach and Bluffs already plans a parking lot further north on the adjacent parcels. They believe that these parking lots individually and cumulatively will significantly degrade the coastal view and are thus incompatible with the continuance of the adjacent recreation areas. The appellants favor public acquisition of bluff top property, citing the *California Coastline Preservation and Recreation Plan*.

Beyond the immediate Davenport bluff area, the appellants are concerned that the proposed project would be the only visitor serving commercial development on the west side of Highway 1 from Pigeon Point in San Mateo County to the City of Santa Cruz. They fear that the project would have precedential impacts that open up the coast to development and cumulatively impact the visual qualities of this scenic road. The appellants are also concerned that the County did not address the cumulative impacts of the potential redevelopment of other former packing sheds on the west side of Highway 1.

***b. Applicable Local Coastal Program Policies***

The following *1994 General Plan and Local Coastal Program for the County of Santa Cruz* provisions are applicable to this contention:

**2.1.3 Maintaining a Rural Services Line.** Maintain a Rural Services Line to serve as a distinct boundary between rural areas and existing enclaves with urban densities. Prohibit the expansion of the Rural Services Line.

**2.1.4 Siting of New Development.** Locate new residential, commercial or industrial development, within, next to, or in close proximity to existing developed areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on environmental and natural resources, including coastal resources.

**2.3.5 Areas Within the Rural Service Line:** Utilize a Rural Services Line (RSL) to recognize and delineate Davenport, Boulder Creek, ...as areas which exist outside the Urban Services Line but have services and densities of an urban nature. Allow infill development consistent with designated urban densities only where served by a community sewage disposal system...

**2.23.2 Designation of Priority Sites:** Reserve the sites listed in Figure 2-5 for coastal priority uses as indicated. Apply use designations, densities, development standards, access and circulation standards as indicated.

**2.23.3 Master Plan Requirements for Priority Sites.** Require a master plan for all priority sites. Where priority use sites include more than one parcel, the master plan for any portion shall address the issues of site utilization, circulation, infrastructure improvements, and landscaping, design and use compatibility for the remainder of the designated priority use site. The Master Plan shall be reviewed as part of the development permit approval for the priority site.

**Figure 2-5 Coastal Priority Sites – North Coast:**

- Identifies the Davenport Bluffs, Parcels 058-072-01,02,03, as a priority use site.
- The Designated Priority Use is existing Parks, Recreation and Open Space with development of coastal access overlook, parking and supporting facilities.
- Special Development Standards require depression and landscaping of parking areas to limit visibility from Highway 1 and to maintain unobstructed coastal views and the use of low growing vegetation that will not obstruct views. Eliminate all roadside parking along the property frontage and provide interior pedestrian circulation to separate pedestrians from Highway 1.
- **Circulation and Public Access Requirements** Coordinate improvements with the parking on parcel 058-121-04. Provide safety improvements for pedestrians crossing Highway 1 and the railroad right-of-way, improved trails to the beach and bluffs including safety barriers on the bluffs and near the railroad tracks.

The *North Coast Beaches Unified Plan*, which is contained in the County *General Plan* also discusses this property adjacent to the subject site. Its Enhancement Plan for Davenport Bluffs shows a 23 -26 space unpaved parking lot directly adjacent to the subject project's proposed parking lot. Also shown is a loop trail (along the edge of the bluff and along the railroad tracks) on the property seaward of the subject site.

Regarding Implementation, *County Code* Section 13.11.072(a)2(i) provides:

**Coordinated Development:** Coordinated site design (including shared parking and circulation systems...) shall be encouraged on adjacent parcels with similar uses. In such cases, mutual access easements granted to each property owner are necessary. Site plans which allow for future shared use between adjacent parcels are encouraged,,,

**c. County's Action/Response:**

In a December 18, 1998 letter, the County responded to the appellants' contentions regarding precedent and cumulative impacts (see Exhibit 6 for complete letter). County staff notes that the project parcel is the only property on the coastal side of Highway 1 in the area that is designated by the General Plan/LCP for commercial use. Other nearby coastal parcels have land use designations of "Agriculture" or "Parks and Recreation." The County letter indicates that any future development that could occur on the adjoining vacant parcels to the north is limited to the allowable uses in the zoning district, Parks and Recreation. These uses do not include the variety of more intense uses allowed in commercial land use designations and



therefore, the proposed development would not initiate a series of new development demands on Davenport's public services and facilities.

The County letter further argues:

The appellants state that the environmental analysis should have included a cumulative impact analysis of certain other possible future developments...[i.e.,] David Leur barn reconstruction, relocation of Davenport's U.S. post office and expansion of RMC Lonestar cement plant. ..None of the projects...had commenced Environmental Review.... In addition, neither the Luers nor RMC projects had been deemed as complete applications by the County during the time that the Bailey/Steltenpohl project was being processed. Therefore, the concept and density of both proposals are not yet clearly defined. No permit application had been made for a relocation of the post office.

The County concluded that CEQA case law states that a cumulative impact analysis only needs to include those projects that have been deemed complete and commenced Environmental Review.

***d. Substantial Issue Determination:***

This contention raises the specter of various growth-inducing and cumulative impacts associated with the project, some of which are realistic to expect. They do not encompass new issues beyond those covered in the previous findings, but rather serve to emphasize the previous conclusions of substantial issue being raised with regard to visual impact, land use, and public services.

The appellants are concerned with development that may occur on the adjacent Davenport Bluffs priority sites (parcels APNs 058-072-1, 2, and 3). The project does pave the way for the adjacent site to developed for a parking lot and public access, by virtue of the common accessway being created and the potential loss of public parking on the subject site. In some senses this is positive and will help carry out local coastal program policies. Site patrons may use the proposed parking and trails to access the adjacent bluff top and beach parcels. Also, the County has required that the subject parking lot and its entrance be designed to serve and connect to a future public parking lot on the adjacent site. This may facilitate development of the planned parking lot to serve the traveling public. However, it will also lead to adverse, cumulative visual impacts. Approval of the subject project and its obtrusive parking lot will be precedential for approving additional adjacent parking that would be similarly obtrusive. And the combination of both parking lots, with no break between them, will unalterable change the view of and character of the bluff. In making this finding, the Commission is not downplaying the need for public parking, but rather indicating that more sensitive design treatment needs to be explored and proposed locations need to be reexamined.

With regard to services it is unlikely that the appellants' assertions that the demands generated on these three parcels will be equivalent to those generated by the subject project. Any future development that could occur is limited to the allowable uses under the

Parks and Recreation zoning district and the *General Plan* provisions for coastal access overlook, parking and supporting facilities. These uses do not include the variety of more intense uses allowed in commercial land use designations. Although some additional water and sewer use could be expected from restrooms, drinking fountains, landscape irrigation and the like, the subject project is not growth-inducing in the sense of adjoining similar structural development and infrastructure occurring.

What is more at issue are additional projects on the inland side of Highway One, which are within the planning process now or may be proposed. The County has set an adverse precedent by allowing building permits for the subject development to be issued before the water and sewer systems are upgraded to handle the resulting demands.

Finally, with regard to other oceanfront parcels, the appellants' contentions regarding growth-inducement for similar types of projects can not come true without local coastal program amendments, given certified restrictive land use plan designations along the rest of the coastline. However, the current zoning does not completely prohibit development. Some agricultural and residential structures are permitted, and could include remodels and upgrades of existing buildings. In these cases, the local coastal program's view protection policies would apply. The fact that the County has not rigorously applied all the policies together for the subject site is cause for concern for future oceanfront projects. For all these reasons, a substantial issue is raised by parts of the appellants' contentions regarding growth-inducement and cumulative impacts.

***e. De Novo Coastal Permit Conditions***

In order to approve a coastal permit for the project, the cited local coastal program policies have to be satisfied. With regard to minimized impacts on adjacent recreational lands, construction related impacts need to be addressed. County condition V.C regarding dust control can be retained. Also, to ensure that excess material is not dumped on recreationally-used lands, the essence of County condition V.A regarding proper disposal of fill materials can be retained. This condition additionally needs to specify that disposal sites are properly permitted.

With regard to opening the adjacent site to increased use via the parking lot connection, visually-related conditions to limit the proposed parking lot will result in this connection not being approved at this time. As discussed above, the question of more parking in the vicinity should be left to a future planning process which can address cumulative impacts. The visually-related conditions also serve to demonstrate that any visible rural development west of Highway One must be carefully designed to meet all local coastal program policies. As so conditioned, the project is consistent with the relevant local coastal program policies and will not set an adverse precedent for any similar future proposals.

***8. Other De Novo Coastal Permit Issues: Geotechnical and Biological***

In addition to the issues that the appeal raised, there are other applicable local coastal program provisions. In order to approve a coastal permit for the project, local policies

addressing structural stability and biological resources have to be satisfied. The former are enumerated in Chapters 16.10 "Geologic Hazards" and 16.20 "Grading" of the *County Code*. These can be satisfied by retaining County conditions II.C, III.F, and IV.A.11 regarding geotechnical review. The required bluff setbacks specified in the geotechnical reviews can be further guaranteed by the condition for an open space easement over this area.

Also, the riparian corridor on the property, relating to San Vicente Creek, has to be protected. Most of this area is designated on the land use plan and is zoned "Parks, Recreation and Open Space." No development is shown to occur in this area, which is the southeastern portion of the parcel. Nevertheless, Section 16.32.090 of the County Code states in part:

(b) The following conditions shall be applied to all development within any sensitive habitat area:...

2.. Dedication of an open space or conservation easement or equivalent measure shall be required as necessary to protect the portion of a sensitive habitat which is undisturbed by the proposed development activity or to protect a sensitive habitat on an adjacent property....

Therefore a condition is necessary to provide protection of the riparian corridor. The corridor has only been generally mapped. Since no development is planned to occur in this area, protecting the entire portion of the property shown on Exhibit 4 is sufficient. As an alternative site-specific resource and buffer mapping could occur to determine a more precise area to protect. As so conditioned, the project is consistent with the relevant local coastal program policies.

### ***C. California Environmental Quality Act (CEQA)***

The County issued a Negative Declaration with 11 mitigation measures under CEQA for this project on February 24, 1998. A mitigation monitoring program was part of the final project approval (See Exhibit 2). By and large County conditions providing environmental mitigation measures have been retained in this approval. However, this report has identified and discussed certain additional potential adverse impacts not fully addressed by the local government. Additional or modified conditions have been attached to this permit to address these. Without these conditions, the project would not be the least environmentally damaging feasible project that could occur on the site. There are no additional feasible mitigation measures that would lessen any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).